Supreme Court, U.S.
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In the Supreme Court of the United States

CARL RICHARD,

PETITIONER,

vs.

STATE OF INDIANA,

RESPONDENT

Petition for a Writ of Certiorari to the Indiana Court of Appeals and the Indiana Supreme Court (denial of petitioner transfer)

BRIEF OF PETITIONER

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QUESTION PRESENTED

Whether Cpl. Matt Campbell's Affidavit for Search Warrant established probable cause to search under *Illinois v. Gates* when 8-year old Callie Richard's alleged hearsay statements were not credible under the totality of the circumstances.

LIST OF PARTIES

The parties to the proceedings below were the Petitioner, Carl Richard, by counsel, Dale Allen, Esq. Allen Law Offices, 701 E. Lincolnway, Valparaiso, Indiana 46383; and the Respondent, State of Indiana, by counsel, Richard A. Brown, Esq., Fulton County Prosecuting Attorney, 815 Main Street, Room 301, P.O. Box 237, Rochester, Indiana 46875, and Steve Carter, Esq. & George P. Sherman, Esq., Office of the Indiana Attorney General, Indiana Government Center South, Fifth Floor, 302 W. Washington Street, Indianapolis, Indiana 46204.

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PETITION FOR A WRIT OF CERTIORARI

Carl Richard, by counsel, respectfully petitions for a writ to review the judgment of the Indiana Court of Appeals and the Indiana Supreme Court (denial of petition to transfer) in this case.

I. OPINIONS BELOW

The opinion of the Indiana Court of Appeals (*See* Appendix) is reported at *Richard v. State,* 820 N.E.2d 749 (Ind. Ct. App. 2005), *transfer denied* (Mar. 31, 2005). The text of the denial of transfer (*See* Appendix) is unreported.

II. JURISDICTION

The judgment of the Indiana Court of Appeals (*See* Appendix) was entered on January 14, 2005. The denial of transfer by the Indiana Supreme Court (*See* Appendix) was entered on March 31, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

III. CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment of the United States Constitution provides that:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

IV. STATEMENT OF THE CASE

The Fourth Amendment of the United States Constitution prohibits unreasonable searches and seizures. In the present case, a police officer searched Petitioner, Carl Richard's, residence and dairy farm pursuant to a search warrant, which was based exclusively on hearsay allegations from Richard's eight-year old daughter. Richard challenged the constitutionality of the search pursuant to Indiana and federal law. Specifically, with respect to Richard's federal claim, Richard argued that the probable cause was insufficient under *Illinois v.* Gates, 462 U.S. 213 (1983)'s totality of the circumstances test. The trial court and Indiana Court of Appeals both determined that the search warrant was supported by adequate probable cause supplied by the eight-year old child, which purportedly formed a "substantial basis" upon which the issuing judge could determine that there was a fair probability that evidence of marijuana would be found on Richard's property under both Indiana law and the Fourth Amendment. The Indiana Supreme Court denied transfer of jurisdiction on this and other issues raised by Richard; however, two of the three Justices voted to grant transfer.

This case presents one overall question for review:

Whether Cpl. Matt Campbell's Affidavit for Search Warrant established probable cause to search under *Illinois v. Gates* when 8-year old Callie Richard's alleged hearsay statements were not credible under the totality of the circumstances.

A. Factual Background.

On October 13, 2003, Cpl. Matt Campbell of the Rochester Police Department was contacted by Riddle Elementary School counselor Patty Keim. (Appendix at 11) Ms. Keim advised Cpl. Campbell that "she was approached by a student by the name of

Callie R. Richard and told her she had been in one of her barns on Friday, October 10 after school." (Id.) Ms. Keim further stated that Callie allegedly "observed what she believed was marijuana" in the barn. (Id.) Callie herself did not personally contact Cpl. Campbell and request to speak with him. (App. at 35) Thereafter, Cpl. Campbell advised Ms. Keim that he would "come to the school to speak to the student." (App. at 11)

Cpl. Campbell testified in his deposition that he did not take any investigative steps into this matter before he arrived at Riddle Elementary School. (App. at 36) In fact, Cpl. Campbell did not even know Callie Richard's name before he arrived at the school. (Id.) Interviewing Callie was Cpl. Campbell's first step with respect to this investigation. (Id.)

Shortly after Cpl. Campbell spoke with Ms. Keim he arrived at Riddle Elementary School at approximately 1:00 p.m. (App. at 11; 36) Cpl. Campbell questioned Callie in Ms. Keim's office. (App. at 37) Principal Jami Johnson was also present in Ms. Keim's office during the questioning. (Id.) Callie was sitting on a couch near Principal Johnson during the questioning. (Id.) All of the adults in the room were "fairly close" to Callie during the questioning. (Id.) Specifically, Cpl. Campbell was within "arm's reach" of Callie during the entire questioning. (Id.)

Callie Richard was eight (8) years old and in the third grade at the time Cpl. Campbell questioned her at Riddle Elementary School. (App. at 40) Cpl. Campbell described Callie's physical appearance as approximately a little under four foot in height and that she weighed eighty pounds. (Id.) Furthermore, Cpl. Campbell described Callie's body frame as being "pretty slender." (App. at 41)

At the time Cpl. Campbell interviewed Callie, he knew there was an ongoing "paternity suite" between Carl Richard and

his ex-wife, Carmen Richard. (App. at 51) Cpl. Campbell agreed in his deposition that it was entirely possible that Carmen Richard, or someone else, could have told Callie to make these allegations against her father in order to spite him. (App. at 51; 52)

During the questioning, Callie allegedly told Cpl. Campbell that she had recently had been in her barn and "found what she believed was marijuana." (App. at 11) Callie allegedly told Cpl. Campbell that "she knows what it is because she had been around it before." (Id.) Callie also allegedly told Cpl. Campbell that there was "plants drying" under some tarps and a blue tub that contained camouflage bags with some "plant material." (App. at 11-12) However, Cpl. Campbell stated in his deposition that it is possible that the substance in the barn that Callie allegedly referred to as "marijuana" could have been hay, straw, corn stalks or some other form of plant material. (App. at 47-48) In fact, Cpl. Campbell readily admitted in his deposition that he is "not a farmer" and does not "know a lot about the difference[s]" between hay and straw. (Id.)

Furthermore, Callie allegedly told Cpl. Campbell that there was "marijuana in the drawer near the stove" in her home. (App. at 12) Callie also allegedly advised Cpl. Campbell that at no time had there been "plants growing" in the basement of her home; however, she was "not [currently] aware of any plants in there." (Id.) Ms. Keim never told Cpl. Campbell as to why Callie allegedly contacted her regarding these matters. (App. at 43) Cpl. Campbell admitted that it is possible that Callie could have been mistaken with regard to the identification of the substance alleged to be "marijuana." (App. at 44) In fact, based on his own professional experience, Cpl. Campbell agreed that young children of eight to nine years of age or younger have tendencies to fabricate things and tell imaginative stories. (App. at 32)

Cpl. Campbell believed that Callie was qualified to identify the substance alleged to be marijuana based on "numerous rumors" that he heard concerning Richard's farm. (App. at 45) These "rumors" concerned marijuana allegedly found growing on Richard's farm during annual marijuana eradication activities by law enforcement; however, no marijuana was ever found on Richard's farm. (App. at 46) Furthermore, Cpl. Campbell believed that Callie was qualified to make such a determination based on a prior and unrelated arrest involving Richard that occurred "years ago." (Id.) This arrest occurred "before Callie was born." (Id.)

Incidentally, Cpl. Campbell was previously present on Richard's property as a guest for Richard's wedding. (App. at 78) The wedding took place in the basement of Richard's residence approximately one year prior to the October 13, 2003 search. (App. at 80-81) In fact, Cpl. Campbell's wife, Rebecca, and Richard's wife, Charla Richard, are "best friends." (App. at 78) While at the wedding, Richard gave Cpl. Campbell a tour of the property. (App. at 80)

Cpl. Campbell questioned Callie at the school for approximately fifteen (15) to twenty (20) minutes. (App. at 49) Immediately after Cpl. Campbell left the school, he prepared the Affidavit for Search Warrant. (App. at 50) Cpl. Campbell utilized the information that Callie allegedly gave him during the questioning as the sole basis for applying for the Search Warrant. (Id.) Cpl. Campbell did not take any further investigative steps concerning the information Callie provided him. (Id.) Notwithstanding the present case, Cpl. Campbell admitted that he takes additional investigative steps to corroborate information provided to him from informants "if it's possible." (App. at 29-30)

Cpl. Campbell also agreed in his deposition that establishing the credibility of a witness is important. (App. at 30)

The Search Warrant was issued on the same day as Callie's interview at approximately 1:58 p.m., or fifty-eight minutes after Cpl. Campbell arrived at Riddle Elementary School. (App. at 13; 50) Cpl. Campbell did not have any further contact with Callie after he left the school and before he served the Search Warrant. (App. at 49) Thereafter, Cpl. Campbell and other law enforcement officers from various agencies conducted a search on Richard's property and discovered contraband. (App. at 13-15)

B. Proceedings Below.

On October 17, 2003, Richard was charged by criminal information in the Fulton Circuit Court with, *inter alia*, two counts of Dealing In Marijuana. (App. at 8) The criminal charges arose after the October 13, 2003 search of Richard's residence, barn and dairy farm by Cpl. Matt Campbell revealed the presence of marijuana and paraphernalia. (App. at 13-15)

On December 22, 2003, Richard filed a motion to suppress. (App. at 102-35) The motion requested the trial court to suppress all of the evidence seized on October 13, 2003 since Cpl. Campbell's Affidavit for Search Warrant did not establish sufficient probable cause based on Callie Richard's alleged hearsay statements. (Id.) On February 9, 2004, the State filed its memorandum in opposition to Richard's motion and hand-delivered a copy to Richard's counsel on February 10, 2004, which was the same day that a hearing on Richard's motion was held. On February 25, 2004, the trial court denied Richard's motion. (App. at 255-56)

On February 27, 2004, Richard filed his Motion for Certification of Appeal of Interlocutory Order and Stay of

Proceedings Pending Appeal. (App. at 257-62) On March 3, 2004, the trial court denied said motion. (App. at 263-64)

On April 6, 2004, a bench trial was held before the Honorable Douglas B. Morton, and Richard's counsel made a continuing objection throughout the trial with respect to the admissibility of all of the evidence introduced by the State, arguing that it was illegally seized on October 13, 2003; however, the trial court overruled all of the objections. (App. at 278; 279-82) Richard was found guilty on the charges and was sentenced on April 28, 2004. (Id.)

Thereafter, Richard appealed to the Indiana Court of Appeals the issue of whether the search warrant was supported by adequate probable cause. On January 14, 2005, the Indiana Court of Appeals, per Judge Mathias, issued an opinion affirming the trial court's denial of Richard's Motion to Suppress. (*See* Appendix) The Court of Appeals held that the search warrant was supported by probable cause and, therefore, the trial court acted within its discretion when it admitted the evidence seized during the execution of the search warrant. (*See* Appendix) Richard did not file a Petition for Rehearing.

On February 4, 2005, Richard filed his Petition to Transfer to the Indiana Supreme Court. On February 28, 2005, the State filed its Response to Petition to Transfer. On March 9, 2005, Richard filed his Reply Brief on Transfer. On March 31, 2005, the Supreme Court denied transfer of jurisdiction; however, two of the five Justices voted to grant transfer of jurisdiction. (*See* Appendix)

V. REASONS FOR GRANTING THE PETITION

As it pertains to what must support the issuance of a search warrant, the text of the Fourth Amendment is clear and exacting:

"no Warrants shall issue but upon probable cause." U.S. CONST., amend. IV. This Court has diligently enforced this constitutional command requiring that a police officer must provide a magistrate with a "substantial basis" for determining the existence of probable cause for issuance of search warrant. *Illinois v. Gates*, 462 U.S. 213, 239 (1983). And absent the principal means of effectuating this requirement is suppression of all evidence seized pursuant to the warrant. *Nardone v. U.S.*, 308 U.S. 338, 341 (1939).

In the instant case, despite its reliance on the Fourth Amendment, the Indiana Court of Appeals and the Indiana Supreme Court through its denial of transfer failed to properly acknowledge and apply the totality of circumstances test under *Illinois v. Gates* as it relates to Callie Richard's hearsay statements. The Indiana Court of Appeals accorded no significance to the purpose of the probable cause requirement of the Fourth Amendment. Specifically, the Indiana Court of Appeals failed to properly cite and consider the "credibility" and the "factual basis" prongs under the test, which remain highly relevant considerations in the probable cause calculus. *See, e.g., Alabama v. White*, 496 U.S. 325, 328 (1990) ("*Gates* made clear, however, that those factors that had been considered under *Aguilar* and *Spinelli*—an informant's 'veracity,' 'reliability,' and 'basis of knowledge'—remain 'highly relevant in determining the value of [a hearsay declarant's information].'").

In addition, the Indiana Court of Appeals failed to consider the following well-established factors which are used to evaluate the overall reliability of a hearsay statements in support of warrants under federal law: (1) whether the informant has given correct information in the past; (2) whether independent police investigation corroborates the informant's statements; (3) some basis for the informant's knowledge is demonstrated; or (4) the

informant predicts conduct or activities by the suspect that are not easily predicted. *Gates*, 462 U.S. at 238.

Further review of this case by this Court is necessary because the Indiana Court of Appeals' decision directly conflicts with this Court's precedents and with the decisions of the Seventh Circuit Court of Appeals. The Indiana Court of Appeals completely failed to recognize one of the central rights protected by the probable cause requirement of the Fourth Amendment: that the hearsay in support of a search warrant must form a ***substantial basis*** under which the issuing judge could determine that there is a fair probability that contraband or evidence of a crime will be found in a particular place. This is an important and recurring constitutional issue, which both state and federal judges deal with on a daily basis throughout the United States. Therefore, this Court should grant review to correct the Indiana Court of Appeals' erroneous decision.

VI. ARGUMENT

CPL. MATT CAMPBELL'S AFFIDAVIT FOR SEARCH WARRANT FAILED TO ESTABLISH PROBABLE CAUSE UNDER *ILLINOIS v. GATES* BECAUSE 8-YEAR OLD CALLIE RICHARD'S ALLEGED HEARSAY STATEMENTS WERE NOT CREDIBLE UNDER THE TOTALITY OF THE CIRCUMSTANCES.

A. Illinois v. Gates' "Totality of the Circumstances" Test.

Where the basis for probable cause rests upon the information provided by an informer, this Court developed a two-pronged test that required a determination that: (1) the informant was credible; and (2) there was a factual basis for the informant's

knowledge, i.e., the particular means by which he or she received the information. *Aguilar v. Texas*, 378 U.S. 108, 114-15 (1964), as later explained and refined in *Spinelli v. U.S.*, *393 U.S. 410, 415-*19 (1969).

In the early 1980s, this Court abandoned *Aguilar-Spinelli*'s two-part test in favor of a "totality of the circumstances" analysis. *Illinois v. Gates*, 462 U.S. at 232-38. Stating that probable cause is a fluid concept that is not readily or usefully reduced to a neat set of legal rules, this Court in *Gates* explained that it actually was returning to the analysis that had traditionally informed probable cause determinations. However, this Court emphasized that it was ***not*** discarding the *Aguilar-Spinelli* factors, though:

> We agree ... that an informant's "veracity," "reliability," and "basis of knowledge" are all highly relevant in determining the value of his report. We do not agree, however, that these elements should be understood as entirely separate and independent requirements to be rigidly exacted in every case ... Rather, they should be understood simply as closely interwined issues that may usefully illuminate the common-sense, practical question whether there is "probable cause" to believe that contraband or evidence is located in a particular place.

Id. at 230.[1]

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[1] *See also Alabama*, 496 U.S. at 328 ("*Gates* made clear, however, that those factors that had been considered critical under *Aguilar* and *Spinelli* – an informant's 'veracity,' 'reliability,' and 'basis of knowledge'—remain 'highly relevant in determining the value of [a hearsay declarant's information].'"; *U.S.*

Thus, the federal test fir ensuring the reliability of a hearsay statement in a probable cause determination allows the use of hearsay only if the "totality of the circumstances" corroborates the hearsay. *Gates*, 462 U.S. at 230-31. To determine whether the totality of the circumstances corroborates the hearsay, a magistrate considers whether there is a fair probability, given all of the circumstances, including the "veracity" and "basis of knowledge" of the person supplying the hearsay information, that evidence of a crime will be found in a particular place. *Gates*, 462 U.S. at 238.

Furthermore, the reliab'lity of hearsay under *Gates*' totality of the circumstances test can be established in a number of ways, including where: (1) the informant has given correct information in the past; (2) independent police investigation corroborates the informant's statements; (3) some basis for the informant's knowledge is demonstrated; or (4) the informant predicts conduct or activities by the suspect that are not easily predicted. *Jaggers*, 687 N.E.2d at 181 (Ind. 1997) (quoting *Gates*, 462 U.S. at 238).[2]

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v. Pritchard, 745 F.2d 1112, 1120 (7th Cir. 1984) ("The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all of the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of the person supplying the hearsay information."); *State v. Allen*, 525 N.E.2d 1267, 1270 (Ind. Ct. App. 1988) ("an informant's truthfulness and basis of knowledge are still important considerations"); *Culver v. State*, 519 N.E.2d 196, 198 (Ind. Ct. App. 1988) (The two prongs of the *Aguilar-Spinelli* test are still "relevant considerations in the totality of the circumstances analysis" under *Illinois v. Gates*).

[2] *See also U.S. v. Jones*, 208 F.3d 603, 609 (7th Cir. 2000) ("Where the credibility of an informant is at issue, we consider (1) the personal observations by the informant, (2) the degree of detail given, (3) independent police corroboration of the informant's information, and (4) the informant testifying at the probable cause hearing."); *U.S. v. Singleton*, 125 F.3d 1097.

However, this Court in *Gates* was also unequivocal that uncorroborated hearsay from an informant whose credibility is unknown cannot suffice to satisfy the probably cause requirement for the issuance of a search warrant. *Gates*, 462 U.S. at 227. The hearsay must exhibit some hallmarks of reliability. *Id.*

A reviewing court should also consider whether the hearsay informant personally appeared and presented an affidavit or testified before the warrant-issuing magistrate, thus allowing the magistrate to evaluate the informant's knowledge, demeanor and sincerity. *U.S. v. Reddrick*, 90 F.3d 1276, 1281 (7th Cir. 1996).

B. Application of *Illinois v. Gates*' "Totality of the Circumstances" Test to the Present Case.

In the present case, Cpl. Matt Campbell did not offer sufficient information in his Affidavit for Search Warrant to establish 8-year old Callie Richard's reliability as a hearsay informant under *Illinois v. Gates'* "totality of the circumstances test."

(1.) "Credibility" (or "Veracity") factor under *Aguilar-Spinelli.*

Cpl. Campbell's Affidavit does not establish Callie Richard's credibility or veracity for being truthful under the first *Aguilar-Spinelli* factor. It should be initially noted that Cpl. Campbell did not indicate anywhere in his Affidavit that he

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1103 (7th Cir. 1997) ("Some of the factors which demonstrate that an informant's information is sufficiently reliable to support the magistrate's issuance of a warrant include: (1) personal observation by the informant; (2) the degree of detail given; (3) independent police corroboration of the informant's information; and (4) the informant's testifying at the probable cause hearing.").

believed 8-year old Callie to be a credible and truthful child. There is absolutely no indication in the Affidavit that Cpl. Campbell asked the principal and/or school counselor at Riddle Elementary School as to whether Callie had ever had occasion to be untruthful. Callie's motivation for allegedly coming forward and advising her school counselor of these allegations is also absent from the Affidavit. Furthermore, there is no indication in the Affidavit that Callie personally appeared before the warrant-issuing judge so he could personally assess her credibility, nor did Callie sign her name to the Affidavit. Essentially, young Callie Richard was not a tried and tested hearsay declarant.

Cpl. Campbell's Affidavit contains no objective information establishing Callie's credibility. The trial court's finding, as well as the Indiana Court of Appeal's finding, that the Affidavit "appears on its face to be credible" is too conclusory. (App. at 255) A blanket assertion that a hearsay declarant appears conclusively credible leaves totally undisclosed the basis on which the judgment is made. There simply must be a more comprehensive statement of underlying facts upon which the warrant-issuing judge can make an independent determination that the hearsay declarant is credible. With such facts, the warrant-issuing judge can challenge the reasonableness of the officer's belief regarding the hearsay declarant's reliability. Eyewitnesses and crime victims are often themselves criminals, drug addicts, liars and/or mischievous children who volunteer information to the police for reasons other than for the call of civic duty.

When the further possibility is considered that a police officer has not made a good faith assessment of the hearsay declarant's credibility, or may even know or suspect him/her to be unreliable, the dangers in acceptance of vague averments of credibility become even more obvious. Automatic judicial

acceptance of credibility may tempt police officers to make superficial averments of credibility without proper support; and some officers, while they may be above wholesale fabrication, may not be averse to some stretching of the truth on occasion.

The trial court reasoned that since Callie came "forward as a citizen witness" the "rules concerning proof of credibility or corroboration do not automatically apply." (App. at 255) This is a material misstatement of the law because it is well-settled that *Aguilar-Spinelli*'s credibility factor, as well as the factual basis factor, are still "highly relevant" considerations when determining the overall value of a hearsay declarant's information.[3] If the rules concerning Callie's credibility do not "automatically apply" as the trial court asserted, which was approved by the Indiana Court of Appeals, then it must follow *a fortiori* that the affidavit of an officer, known by the warrant-issuing judge to be honest and experienced, stating that contraband is located in a certain place must also be acceptable. It would be quixotic if a similar statement from an honest informant, but not one from an honest officer, could furnish probable cause. But this Court has repeatedly held that the unsupported assertion or belief from an honest officer does not satisfy the probable cause requirement.[4]

Furthermore, even assuming *arguendo* that Callie came to her school counselor on her own, Callie did ***not*** come to Cpl. Campbell—he came to her. The information contained in Cpl. Campbell's Affidavit was procured during Callie's custodial interrogation at the school. From the perspective of a reasonable

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[3] *See* footnote 1, *supra* (citing to cases discussing the continued relevance of the *Aguilar-Spinelli* factors in *Gates*' "totality of the circumstances" test).

[4] *See, e.g., Whitely v. Warden*, 401 U.S. 560, 564-68 (1971); *Nathanson v. U.S.*, 290 U.S. 41, 46-47 (1933).

8-year old in Callie's position, the situation was inherently coercive due to the presence of three authority-type figures: (1) a school counselor; (2) a principal; and (3) a law enforcement officer. Once in custody, which simply means that Callie would not have felt free to leave, volunteerism was absent. In addition, at the tender age of eight (8), Callie's immaturity and inexperience put her at a great disadvantage in confronting a police interrogation. A very young child, like Callie, is not equal to the police in knowledge and understanding of the consequences of answering the questions being asked. Thus, Callie's hearsay information was not objectively credible under *Aguilar-Spinelli*'s first factor.

(2.) "Factual basis" (or "basis of knowledge") factor under *Aguilar-Spinelli*.

Cpl. Campbell's Affidavit does not establish an objective factual basis, or basis of knowledge, for the hearsay information that Callie Richard furnished him under *Aguilar-Spinelli*'s second factor. It should be initially noted that Petitioner Carl Richard's name does not appear anywhere in Cpl. Campbell's Affidavit.[5]

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[5] *See, e.g., U.S. v. McNeal*, 82 F.Supp.2d 945, 958 (S.D. Ind. 2000) (invalidating the probable cause affidavit and reasoning that "[t]he affidavit in this case, however, contains insufficient information to establish a fair probability that [the defendant] actually lived at the residence at 7150 N. Lakeside Drive. Any inference that [the defendant] lived at the Lakeside Drive address is based solely on [the police officer's] conclusory opinion that the residence was under [the defendant's] control. The affidavit lacks any factual basis for this conclusion. There is no indication that utility bills or records of property ownership were relied upon, that a vehicle registered to [the defendant] was seen parked outside the residence, that anyone reported [the

The word "they" is stated three times on page 2 of the Affidavit; however, this word is open to interpretation since it could be referring to any number of persons: parents; brothers/sisters; relatives/friends living at the residence; overnight guests; etc. Furthermore, Cpl. Campbell's Affidavit does not indicate that he had personal knowledge of any of Callie's allegations, nor did he at any time prior to the execution of the search warrant personally observe the substance alleged to be "marijuana" or independently investigate Callie's allegations of criminal activity.

Essentially, the "factual basis" factor is not concerned with Callie's honesty. It is concerned, rather, with conclusory validity. Even assuming Callie had credibility amounting to sainthood, the warrant-issuing judge still may not accept her bare conclusions anymore than he could accept the bare conclusion of a sworn, known and trusted police-affiant. To do so would amount to an unconstitutional delegation of the decision-making function to Callie, which the Fourth Amendment lodges exclusively in the warrant-issuing judge himself.

The factual basis consideration ***assumes*** Callie's veracity for truthfulness, and then proceeds to probe and test her conclusion: What were the raw facts upon which 8-year old Callie based her conclusions? How precisely did she obtain those facts? Did she imagine or fabricate her allegations to spite her father? When and what precisely did she see, hear, smell or touch firsthand? If she heard the facts from someone else, what makes that third person credible and how did that third person come by the knowledge? Was she forced to say what she allegedly told

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defendant] lived at the residence, or even that [the defendant] was seen coming and going from the house.").

Cpl. Campbell under the threat of punishment or coercion by him or an unknown third-party? The warrant-issuing judge was required to ascertain the source for the raw data provided by Callie's senses and then weigh that data for himself. He is not concerned with that part of Cpl. Campbell's Affidavit ***about*** Callie but with the recitation of the story coming from Callie. Thus, even assuming *arguendo* that Callie was "credible" under the first *Aguilar-Spinelli* factor, there remains a complete void of information bearing on the "factual basis" factor.

For example, there is an absence of objective facts from which the warrant issuing judge could have concluded that an 8-year old child in third grade, like Callie, had a reasonable basis for claiming the substance she saw was "marijuana." There is no objective indication Callie spoke with personal knowledge that she actually knew the substance in question to be "marijuana." The objective reader is merely told that Callie "believed" the substance was marijuana, which indicates that she was speculating. The Affidavit does not reveal exactly how Callie reached this conclusion. If Callie had even a minor inkling of certainty regarding the substance she would have stated that "it was" marijuana. And, if Callie was only speculating, then her conclusion that the substance was "believed" to be "marijuana" may have been based on rumor, gossip or an opinion from an unknown third-party. We do not know, and, accordingly, neither did the warrant issuing judge.

Second, the trial court made the following finding, which was approved by the Indiana Court of Appeals, with respect to Callie's alleged basis of knowledge:

> The specificity of the information includes specific locations (a white case in an identified kitchen drawer) activities of concealment and of processing a volume of

marijuana, and clear statements of limitation of knowledge (for instance not knowing whether plants were now in the "secret room" in the basement), all in a location with which the officer was familiar.

(App. at 256)

Nonetheless, the quantum of detail in the Affidavit describing the barn, house and objects therein does not eliminate the possibility of Callie's conclusion that she "believed" the substance to be "marijuana" was based upon fabrication or unjustified speculation on her part. The trial court essentially said that even if we entertain some doubts as to Callie's credibility, her explicit and detailed descriptions entitle her information to greater weight than what might otherwise be the case. However, as one court has noted, "If the informant were concocting a story out of the whole cloth, he/she could fabricate in fine detail as easily as with rough brush strokes. Minute details tell us nothing about veracity." *Stanely v. State*, 313 A.2d 847 (Md. App. Ct. 1974).

The simple fact that Callie had been physically present on the premises is not enough under the factual basis factor to support her allegations of criminal activity. The notion that great detail implies personal observation rather than the overhearing of rumor or gossip, presupposes a honest hearsay declarant. Perhaps the quantum of detail that Callie allegedly provided [illegible]. Campbell eliminates the possibility that she was relating what someone else told her, for it is unlikely that such an elaborate description would have been passed to her from some other person. But the detail does not eliminate the possibility that her conclusion about the substance alleged to be "marijuana" was based upon unjustified speculation on her part, perhaps involving a rumor she had heard. And, if detail rests on personal observations of someone else, the objective reader knows nothing of the third person's honesty or

source(s) of information. At best, the details only merit the conclusion that Callie had been present on the premises.

Third, the substance in the barn could just have easily been hay, straw or some other plant material and the substance "in the drawer near the stove" could just have easily been oregano, parsley flakes or some other cooking spice. In his deposition, Cpl. Campbell agreed that children of Callie's young age have tendencies to fabricate things and tell imaginative stories. (App. at 32)

Fourth, Cpl. Campbell had independent knowledge of the property since he had previously attended Richard's wedding on the property itself nearly one (1) year prior to the October 13, 2003 search. Anyone at the wedding could have easily described the layout of the property. It is also plausible that Cpl. Campbell's wife gave him a description of the property since she and Richard's wife, Charla Richard, were "best friends" at the time the Affidavit was drafted. (App. at 78) Thus, Callie's description of the barn and house is of no persuasive significance to the factual basis factor.

Finally, Callie's prior contact with the alleged "marijuana" is the closest the affidavit comes to providing a factual basis for the information she furnished. However, the statement in the Affidavit that Callie "knows what it is because she has been around it before" does not reveal an objective factual basis as to ***how*** she came to the conclusion that the substance was in fact "marijuana" on the prior occasion, which leaves the objective reader with yet another question to ponder. Both the trial court and the Indiana Court of Appeals failed to address this critical question. Again, Callie's conclusion that the substance was "marijuana" on a prior occasion may have been based on mere rumor, gossip or an opinion from an unknown third-party.

Cpl. Campbell's Affidavit also fails to establish a time-frame as to ***when*** Callie had allegedly "been around it before." Was Callie 8-years old at the time or was she, possibly, 3-years old? The affidavit also fails to mention ***where*** Callie had allegedly "been around it before." Could a mischievous schoolmate have shown Callie oregano or some other harmless plant substance in a baggie on the playground at school and claimed it to be marijuana as a prank? Cpl. Campbell's Affidavit keeps the answers to these questions and other possibilities shrouded in mystery.

Thus, Cpl. Campbell's affidavit does not provide a sufficient "factual basis" for the hearsay information that Callie allegedly furnished under *Aguilar-Spinelli*'s second factor.

(3.) "Totality of the circumstances" under *Illinois v. Gates.*

Cpl. Campbell's Affidavit does not contain sufficient information establishing that the "totality of the circumstances" corroborates Callie's alleged hearsay statements under *Illinois v. Gates.*

First, *Aguilar-Spinelli*'s "credibility" and "factual basis" factors, which remain highly relevant considerations under *Gates*' totality of the circumstances calculus, are both lacking as previously discussed in Sections VI.B(1) and (2), *supra.*

Second, Cpl. Campbell's Affidavit does not reveal whether Callie had ever provided correct information to Cpl. Campbell or any other police officer in the past. Essentially, 8-year old Callie was not a tried and tested hearsay declarant.

Third, the face of the Affidavit does not indicate whether Cpl. Campbell conducted an independent investigation to

corroborate any of the information allegedly provided by Callie.[6] In fact, Cpl. Campbell testified that talking to Callie at Riddle Elementary School was his first step with respect to his investigation. Cpl. Campbell also testified that he did not bother to take any investigative steps after he spoke with Callie, essentially shirking his duty to investigate. Cpl. Campbell questioned Callie at the school for approximately 15-20 minutes, drove to the Rochester Police Department to draft the Affidavit and then presented it to the warrant-issuing judge—all in ***fifty-eight (58) minutes***. There certainly was enough time for Cpl. Campbell to take some minimal steps towards the developing of ***some*** independent data in support of Callie's hearsay allegations; yet, he did absolutely nothing. Instead of conducting minimal investigation or doing surveillance, Cpl. Campbell rushed to court, recklessly seeking to invade the privacy of a citizen and to search his home.

Furthermore, the Affidavit is silent as to the existence of any exigent circumstances and/or shortage of time to investigate, which would have made corroboration impossible or too burdensome to undertake. As in Cpl. Campbell's case, where there was an opportunity for inquiry and investigation, inquiry and investigation should be made. Cpl. Campbell was not warranted in relying upon circumstances deemed by him suspicious, when the means were at hand of either verifying or dissipating those suspicions without risk, and he neglected to avail himself of those

---

[6] *See, e.g., Edwards v. Cabrera*, 58 F.3d 290, 293 (7th Cir. 1995) ("The Court [in *Gates*] directed that not only are the informant's "reliability," "veracity," and "basis of knowledge" to be considered, but also the degree to which the investigating officers can corroborate the tip.").

means. Indeed, Callie Richard's alleged reliability quickly evaporates when one considers the following suspicious circumstances, all of which existed at the time Cpl. Campbell drafted the Affidavit:

(i) Callie was an 8-year old child and in third grade when she was interrogated by Cpl. Campbell. Great inequity existed between Cpl. Campbell and a child of Callie's tender age.[7] (App. at 40)

(ii) Cpl. Campbell, the principal and counselor (all three authority-type figures) interrogated Callie in a room at the school outside the presence of her parents. The situation produced an inherently coercive atmosphere from the perspective of a reasonable 8-year old in Callie's position. No statement by Callie could truly be the product of her free choice. (App. at 37)

(iii) Cpl. Campbell knew that there was an ongoing "paternity suit" between Carl Richard and his ex-wife, Carmen Richard,

---

[7] *See, e.g.*, Welsh S. White, *Miranda's Waning Protections*, 202 (2001) (Stating that the mental condition of a hearsay declarant should be considered when determining whether the information was credible. Social scientists have long maintained that "special protections must be afforded juveniles and to all other persons of below-average intelligence, to immunize the risk of untruthful admissions due to their vulnerability to suggestive questioning." During the 1950s and 1960s, the U.S. Supreme Court began to take into account a witness'/suspect's vulnerability and weakness to help determine whether a statement was voluntary or not.).

when he drafted the Affidavit. Cpl. Campbell agreed inn his deposition that it was entirely possible that Carmen Richard, or someone else, could have told Callie to make these allegations against her father, Carl Richard, in order to spite him. (App. at 551-52)

(iv) Cpl. Campbell agreed in his deposition that it is possible that the substance in the barn that Callie allegedly identified as "marijuana" could have been hay, stray, corn stalks or some other form of plant material. (App. at 47-48)

(v) Cpl. Campbell admitted in his deposition that it is possible that Callie could have been mistaken with regard to the identification of the substance alleged to be "marijuana." (App. at 44)

(vi) Based on his experience as a law enforcement officer, Cpl. Campbell agreed in his deposition that young children of 8-9 years of age or younger have tendencies to fabricate things and tell imaginative stories. (App. at 32)

(vii) Cpl. Campbell believed Callie was qualified to identify the substance alleged to be "marijuana" based on "numerous rumors" concerning Richard's farm, which occurred "years ago" "before Callie was born." (App. at 45-46)

(viii) Cpl. Campbell never personally observed to be "marijuana" prior to the execution of the search warrant. Thus, Cpl. Campbell could only speculate as to (a) whether the substance "believed" to be marijuana actually existed and (b) whether it was in fact "marijuana" in the first place. (App. at 11)

Certainly, the exclusionary rule did not require Cpl. Campbell to obtain absolute verification of all sources supporting his Affidavit, nor did it require Cpl. Campbell provide enough information to meet the standard of proof need for a conviction. Yet, while a claim of firsthand observation may ordinarily boost the credibility of an allegation of criminal activity, Callie's alleged firsthand knowledge could have just as easily been fabricated under the circumstances to make the underlying allegations appear more credible. Absent corroboration by Cpl. Campbell, Callie's allegations, no matter how specific, amount to little more than an anonymous tip and were insufficient to establish probable cause.

Fourth, the factual basis of Callie's knowledge concerning the identification of the substance alleged to be "marijuana" was based solely on the statement in the Affidavit that "she had been around it before." However, as outlined in Sections VI.B(1), *supra*, this was insufficient to establish Callie's reliability.

Finally, Callie never personally appeared before the warrant-issuing judge, which would have permitted him the opportunity to at least evaluate Callie's knowledge, demeanor and sincerity. Based on Cpl. Campbell's "just trust me approach," the judge took a huge leap of faith with respect to the reliability of Callie's alleged hearsay statement when he issued the warrant.

The warrant-issuing judge simply rubber-stamped Cpl. Campbell's representations.

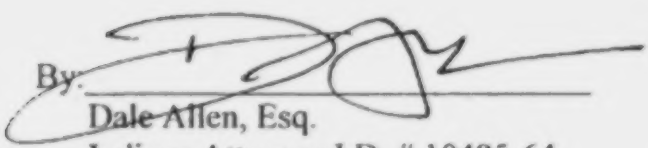
In summary, Cpl. Campbell's Affidavit does not contain facts sufficient to establish Callie's credibility. Nor did Cpl. Campbell corroborate any information relayed to him by Callie that connected Carl Richard with alleged unlawful activity. Considering the totality of the circumstances under *Gates*, the determination of probable cause in this case lacked a substantial basis and the search of Richard's residence and property was unlawful under the Fourth Amendment.

VII. CONCLUSION

Based on the foregoing reasons, the Petition for Certiorari should be granted.

Respectfully submitted,

ALLEN LAW OFFICES



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VIII. CERTIFICATE OF SERVICE

I certify that the foregoing Petition for a Writ of Certiorari (Petitioner's Brief) and attached Appendix were served upon the following counsel by first-class United States mail, postage prepaid, this 28 day of June, 2005:

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Supreme Court, U.S.
FILED

No. 05-496 JUN 28 2005

OFFICE OF THE CLERK

In the Supreme Court of the United States

CARL RICHARD,

PETITIONER,

vs.

STATE OF INDIANA,

RESPONDENT

PETITIONER'S APPENDIX

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STATE OF INDIANA) IN THE FULTON CIRCUIT COURT

) SS:

COUNTY OF FULTON) 2004 TERM

STATE OF INDIANA,

vs. CAUSE NOS.: 25C01-0310-FC-00073

CARL RICHARD

STATE OF INDIANA,

vs. CAUSE NOS.: 25C01-0310-FC-00074

CARLA RICHARD

ORDER

This cause was presented upon the Defendant's Motion to Suppress heard in open Court on the 10th day of February, 2004. Now the Court being advised, determines as follows:

1. The Motion to Suppress is DENIED.
2. The Miranda waiver requirements for children complained of by the defendants during the interview with the child Callie is not a requirement for a witness interview; it is a requirement only in

the event of an admission or confession by a child concerning criminal activity by the child. The remedy in these settings, of course, is suppression of the evidence in the child's delinquency or waiver trial. That this clearly is the purpose of the statute is apparent from the lack of caselaw on the topic coupled with the clear reference in Section 3 of the Code referring to admission of the evidence against the child.

3. The Court concurs with the State's position that Callie comes forward as a citizen witness so that rules concerning proof of credibility or corroboration do not automatically apply. Testing the totality of the circumstances, the report appears on its face to be credible. It comes from an 8 year old and contains no signs of reporting that are inherently incredible as the result of a child's fabrication. The child did not come to the police originally but instead took similar information to her school counselor. The specificity of the information includes specific locations (a white case in a identified kitchen drawer), activities of concealment and of processing a volume of marijuana, and clear statements of the limitation of knowledge (for instance not knowing whether plants were now in the "secret room" in the

basement), all in a location with which the officer was familiar.

4. The Court additionally concurs with the State's position that, even if there were a reason for the officer to have disbelieved these statements, it is apparent that the reviewing Judge did not disbelieved them and authorized a warrant based upon them. The Officer's execution of the warrant was therefore a good faith pursuit of his duties.

SO ORDERED, this 25th day of February, 2004.

_____

Douglas B. Morton, Judge
Fulton Circuit Court

STATE OF INDIANA) IN THE FULTON CIRCUIT COURT

) SS:

COUNTY OF FULTON) 2004 TERM

STATE OF INDIANA,

vs. CAUSE NOS.: 25C01-0310-FC-00073

CARL RICHARD

ORDER

This cause was presented by trial to the Court upon Count I, Dealing in Marijuan as a Class C Felony and Court II, Dealing Marijuana as a C Felony on this 6th day of April, 2004. Now the Court be advised determines as follows:

1. Upon evidence presented, the Court finds beyond a reasonable doubt that the defendant Carl Richard is GUITLY of dealing in marijuana as alleged in Count I, by possession of marijuana in an amount of greater than 10 pounds with intent to deliver.
2. Upon evidence presented, the Court finds beyond a reasonable doubt that the defendant Carl Richard is GUILTY of dealing in marijuana as alleged in

Count II, by the manufacture of Marijuana in an amount greater than 10 pounds.

The Court now orders the Fulton County Probation Department to prepare a pre-sentence report and recommendation for sentencing upon the Court's verdicts, sentencing to be in conjunction with the defendant's guilty plea upon Court III. The Court tentatively schedules sentencing hearing for 9:00 a.m., Wednesday, April 28, 2004.

SO ORDERED, this 6th day of April, 2004.

_____

Douglas B. Morton, Judge
Fulton Circuit Court

CLERK

SUPREME COURT, COURT OF APPEALS, AND TAX COURT

STATE OF INDIANA

217 STAE HOUSE, INDIANAPOLIS, IN 46204

317-232-1930 • FAX 317-232-8365

David C. Lewis

Clerk

MATTHEW BARRETT
701 E. LINCOLNWAY

VALPARAISO, IN 46383

25A05-0405-CR-00243
Lower Court Number:
25C010310FC73

RICHARD, CARL -V- STATE OF INDIANA

You are hereby notified that the COURT OF APPEALS has on this day 1/14/05 ISSUED THE ENCLOSED OPINION:

WITNESS my name and the seal of said Court,

This 14TH day of JANUARY, 2005

Clerk, Supreme Court, Court of Appeals and Tax Count

CLERK

SUPREME COURT, COURT OF APPEALS, AND TAX COURT

STATE OF INDIANA

217 STAE HOUSE, INDIANAPOLIS, IN 46204

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Clerk, Supreme Court, Court of Appeals and Tax Count

FOR PUBLICATION

ATTORNEYS FOR APPELLANT:	ATTORNEYS FOR APPELLEE :
MATTHEW D. BARRETT DALE ALLEN Allen Law Offices Valparaiso, Indiana	STEVE CARTER Attorney General of Indiana GEORGE P. SHERMAN Deputy Attorney General Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

CARL RICHARD,	)	
	)	
Appellant-Defendant,	)	
	)	
Vs.	)	No.25A05-0405-CR-243
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE FULTON CIRCUTI COURT
The Honorable Douglas B. Morton, Judge
Cause No. 25C01-0310-FC-73

January 14, 2005

Filed-Stamped: January 14, 2005

OPINION-FOR PUBLICATION

MATHIS, Judge

Carl Richard ("Richard") was convicted of Class C felony dealing in marijuana in Fulton circuit Court. Richard Appeals his conviction arguing that the trial court abused it discretion when it admitted evidence seized during the search of his residence and outbuildings because the search warrant was not supported by probable cause. Concluding that the search warrant was supported by probable cause, we affirm.

Facts and Procedural History

On October 13, 2003, Rochester City Police Office Matt Campbell ("Officer Campbell") was contacted by Patty Keim ("Keim"), a counselor at Riddle Elementary School. Keim that she had discovered marijuana on her father's property where she was living. Tr. P. 25. Officer Campbell proceeded to the school where he met with Keim, the school principal, and C.R.

As a result of his conversation with eight-year-old C.R., on that same day, Officer Campbell applied for a search warrant and submitted a probable cause affidavit, which provides in pertinent part:

Matt Campell, being first duly sworn, upon his oath says the following:

1. That he is a law enforcement officer with Rochester City Police.
2. That he believes and has good cause to believe that certain things, namely marijuana and items of contraband are concealed in or upon the following described property in Fulton County, Indiana: 2183 West 500 North
   Rochester, IN 46975
   Including House and Barn and Outbuildings

3. Said items constitute evidence of the commission of the offense of Possession of Marijuana and Possession of Paraphernalia.

4. Affiant believes there is probable cause to search based upon the following facts:

Patty Keim (Riddle School Counselor) contacted me on today's date. She stated that she was approached by a student by the name of [C.R.] and told her she had been in one her barns on Friday, October 10 after school. While in the barn she observed what she believed was marijuana. I advised I would come to the school to speak with the student.

At approximately 1:00PM I went to Riddle Elementary School to speak with [C.R.], Mrs. Keim, and Mrs. Johnson (School Principal). During the interview[C.R.] again stated she had been in the barn on Friday and found what she believed was marijuana. She stated she knows what it is because she has been around it before. [C.R.] stated she was in the barn just to the east of her house with a U-shaped drive. She houses rabbits in this barn. She stated near her rabbit cages there are blue tarps and under the tarps is located several plants drying. She also stated there is a blue tub that contains camouflage bags with the same type of plant material. [C.R.] then stated that in the barn near this same barn was an upper area she gained access to by climbing a ladder. In this area she located more of the same type of plants drying.

I asked [C.R.] if they had any marijuana in the house. She stated they always had marijuana in the drawer near the stove. She stated they kept it in a white case. She then spoke of a hidden room in the basement area near the furnace room. She stated this room had bi-fold doors and then remove items from in front of the panel and then go into the dim room. She

stated she had been in the room before when there were plants growing. She is not aware if there are any plants in there at this time.

Wherefore affiant requests the Court to issue a search warrant directing the search for and seizure of the above-described property.

Ex. Vol., State's Ex. 1; Appellant's App. Pp. 11-12.

The warrant was issued and executed at 1:58 p.m. on October 13, 2003. During their search of the Richard property, the officers found marijuana in a kitchen drawer and master bedroom. In a "hidden room" in the basement the officers found marijuana, buckets of dirt, and plant fragments on the floor. In the barns, officers found camouflaged bags with small quantity of marijuana inside and a barrel full of marijuana. In a second barn, they discovered a large quantity of marijuana in the loft. The net weight of the marijuana was 15.35 pounds.

On October 17, 2003, Richard was charged with two counts of Class C felony dealing in Marijuana,[1] Class D felony battery, and Class A misdemeanor resisting law enforcement. On December 22, 2003, Richard filed a motion to suppress the evidence seized during the search of his house and barns. The motion was denied and Richard moved to certify the trial court's order for interlocutory appeal. The trial court denied Richard's motion to certify.

On April 6, 2004, Richard pled guilty to battery as a Class charge. A bench trial commenced on that same day. The trial court A misdemeanor and the State dismissed the resisting law enforcement

[1] The first count alleged that Richard possessed more than ten pounds of marijuana with the intent to deliver and the second count alleged that Richard manufactured more than ten pounds of marijuana. Appellant's App. P. 8.

found Richard guilty of both counts of Class C felony dealing in marijuana. At sentencing, the court withheld entry of judgment on one count of Class C felony dealing in marijuana and sentenced Richard to a term of six years executed on the second count of Class C felony dealing in marijuana. He was also sentenced to time served on the Class A misdemeanor battery conviction. Richard now appeals. Additional facts will be provided as necessary.

Discussion and Decision

Richard argues that the trial court abused its discretion when it admitted the evidence seized during the search of this house and barns. "The evidentiary rulings of a trial court are afforded great deference and are reversed on appeal only upon a showing of an abuse of discretion." Reynolds v. State, 797 N.E.2d 864, 867 (Ind. Ct. App. 2003). An abuxe of discretion occurs if a trial court's decision is clearly against the logic and effect of the facts and circumstances before it. Pickens v. State, 764 N.E.2d 295,297 (Ind. Ct. App. 2002), trans. denied.

Richard argues that the search warrant was not supported by probable cause because the probable cause affidavit did not "contain facts sufficient enough to establish eight-year-old C.R.'s credibility and basis of knowledge." Dr. of Appellants at 7. Richard also contends that the affidavit did not contain sufficient information corroborating C.R.'s hearsay statements.

Both the Fourth Amendment of the United States Constitution and Article One, Section Eleven of the Indiana Constitution demand that no search warrant be issued unless it is supported by probable cause. "Probable cause is a 'fluid concept incapable of precise definition...[that] is to be decided based on the facts of each case.'" Creekmore v. State, 800 N.E.2d 230, 233 (Ind. Ct. App. 2003) (quoting Figert v. State, 686 N.E.2d 827, 830 (Ind. 1997)).

In deciding whether to issue a search warrant, "'[t]he take of the issuing magistrate is simply to make a practical, common sense

decision whether, given all the circumstances set forth in the affidavit...there is a fair probability that contraband or evidence of a crime will be found in a particular place.'" Query v. State, 745 N.E.2d 769, 771 (Ind. 2001) (quoting Illinois v. Gates, 462 U.S. 213, 238 (1983)). The duty of the reviewing court is to determine whether the magistrate had a "substantial basis" for concluding that probable cause existed. Id. A "substantial basis" determination requires the reviewing court, with significant deference to the magistrate's determination, to focus on whether reasonable inferences drawn from the totality of the evidence support the determination of probable cause. Houser v. State, 678 N.E.2d 95, 99 (Ind. 1997). A "reviewing court" for these purposes includes both the trial court ruling on a motion to suppress and an appellate court reviewing that decision. Id. At 98. In this review, we consider only the evidence presented to the issuing magistrate and not post hoc justifications for the search. Query, 745 N.E.2d at 771.

When a probable cause affidavit is based on hearsay, "the affidavit must either: (1) contain reliable information establishing the credibility of the source and of each of the declarants of the hearsay and establishing that there is a factual basis for the information furnished; or (2) contain information that established that the totality of the circumstances corroborates the hearsay." Ind. Code § 35-33-5-2(b) (1998). "[T]he hearsay 'must exhibit some hallmarks of reliability.'" Leicht v. State, 798 N.E.2d 204, 207 (Ind. Ct. App. 2003), trans. Denied (quoting Jaggers v. State, 687 N.E.2d 180, 182 (Ind. 1997)).

Our courts have observed that there are tow categories of informants: Professional informants and cooperative citizens. Clifford v. State, 474 N.E.2d 963, 969 (Ind. 1985). The test for

determining the reliability of each group of informant is different.[2] Id. Cooperative citizens who act as informants

> "include victims of crime or persons who personally witness a crime. These individuals generally come forward with information out of the spirit of good citizenship and the desire to assist law enforcement officials in solving crime. They are usually one-time informants and no basis exists from prior dealings to determine their reliability. Further, information of this type usually goes to past completed crimes rather than future or continuing crimes.
>
> Some jurisdictions have therefore held that informants of this type are to be considered reliable for the purpose of determining probable cause unless incriminating circumstances exist which cast suspicion upon the informant's reliability."

Id. (quoting Pawloski v. State, 269 Ind. 350, 354, 380 N.E.2d 1230, 1232-33 (1978)). See also Frasier v. State, 794 N.E.2d 449, 457 (Ind. Ct. App. 2003) ("Information gleaned from cooperative citizens who are either eyewitnesses or victims of a crime may be relied upon in determining whether probable cause exits for a search where there are no circumstances which call the informant's motives into question."). However, "the requirement for corroboration is not totally eliminated. The amount of evidence necessary to satisfy the probable cause test is largely determined on a case-by-base basis." Pawlaski, 269 Ind. At 355, 380 N.E.2d at 1233.

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[2] The reliability of hearsay from a confidential informant can be established in a number of ways, including where: (1) the informant has given correct information in the past, (2) independent police investigation corroborates the informant's statements, (3) some basis for the informant's knowledge is demonstrated, or (4) the informant predicts conduct or activities by the suspect that are not ordinarily easily predicted. Jaggers v. State, 687 N.E.2d 180, 181 (Ind. 1997) (citation omitted).

In this case, C.R. falls into the category of citizen informants and there are no incriminating circumstances which cast suspicion upon her reliability. C.R. voluntarily told her school counselor that there was marijuana on Richard's property.[3] Moreover, her young age does not render her statements unreliable. Although a child under the age of ten was formerly presumed to be incompetent, the statute setting forth that presumption was repealed in 1990. The applicable rule is now found in Indiana Evidence Rule 601, which provides, "[e]very
person is competent to be a witness except as otherwise provided in these rules or by act of the Indiana General Assembly." Ind. Evidence Rule 601 (2004).

> Rule 601's "failure to presumptively exclude children does not prohibit special inquiry into their competency prior to testifying when the issue is raised by defendant." The rule "read in conjunction with the repeal of the subdivision regarding children in the witness competency statute, abandoned the previous arbitrary lines drawn regarding age, in favor of the rule which assumes competency until otherwise demonstrated cy the opponent of the testimony."

Aldridge v. State, 779 N.E.2d 607, 609 (Ind. Ct. App. 2002), trans. Denied (Quoting Burrell v. State, 701 N.E.2d 582, 585 (Ind. Ct. App. 1998)).

When a child is called to testify at trial, the trial court has the discretion to determine if a child witness is competent based on the court's observation of the child's demeanor and responses to A child's competency to testify at trial is established by demonstrating that he or she (1) understands the difference between telling a lie and the questions posed by counsel and the court. Haycraft v. State, 760 N.E.2d 203, 209 (Ind. Ct. App. 2001), trans. Denied (citing Newsome

---

[3] That Richard and C.R.'s mother were involved in a contentious paternity dispute over C.R.'s sibling is not an incriminating circumstance which casts suspicion on C.R.'s reliability or calls C.R.'s motives into question.

v. State, 686 N.E.2d868, 873 (Ind. Ct. App. 1997)). telling the truth, (2) knows he or she is under a compulsion to tell the truth, and (3) knows what a true statement actually is. Harrington v. State, 755 N.E.2d 1176, 1180 (Ind. Ct. App. 2001) (citing Newsome, 686 N.E.2d at 872).

However, establishing a child's competency to testify at trial utilizing those three factors is required for testimony under the "beyond a reasonable doubt" standard. The issuing judge or magistrate applies a lower standard to determine whether probable cause to search exists: "Whether there is a fair probability that contraband or evidence of a crime will be found in a particular place." See Query, 745 N.E.2d at 771 (emphasis added). Moreover, probable cause "may be established by evidence that would not be admissible at trial." Lamagna v. State, 776 N.E.2d 995, 958 (Ind. Ct. App. 2002). Therefore, although a determination of a child's competency utilizing the test set forth above would assist in our review of probable cause cases involving child informants, we will not require law enforcement officers to make such a specific inquiry into a child's competency for the purposes of establishing probable cause to issue a search warrant.

Finally, although we have determined that C.R.'s age does not render her statements unreliable and that there are no incriminating circumstances that cast suspicion upon C.R.'s reliability, we must sill consider whether the reasonable inferences drawn from the totality of the evidence support the determination of probable cause. Officer Campbell's affidavit reveals that after voluntarily making a statement to her school counselor, C.R. told Officer Campbell that she personally observed what she believed to be marijuana in the barn where she keeps her rabbits. She then stated that several plants of what she believed to be marijuana were located under blue tarps near her rabbit cages. C.R. also told Officer Campbell, "there is a blue tub that contains camouflage bags with the same type of plant material." Appellant's App. P. 12. C.R. stated that there is marijuana located in

the upper area of a second barn and that she gained access to that area by climbing a ladder. In addition, C.R. stated that there is always marijuana in a white case in a drawer near the stove in the house. She also described a "hidden room" in the basement near the furnace room where she had seen marijuana plants growing in the past. Id. Finally, C.R. stated that she knows what marijuana is because she has been around it before.[4] Appellant's App. P. 11.

We conclude that C.R.'s personal observation of the marijuana, the specificity of her statements with regard to the location of the marijuana, and her statement that she knew the appearance of marijuana from being "around it before" formed a substantial basis upon which the issuing magistrate could determine that there was a fair probability that evidence of possession of marijuana would be found in Richard's barns and residence. Accordingly, we conclude that the search warrant was supported by probable cause, and therefore, the trial court acted within its discretion when it admitted the evidence seized during the execution of the search warrant.

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[4] The facts of this case are similar to those in State v. Yeomans, 10 S.W.3d 293, 295 (Tenn. Crim. App. 1999), in which a twelve-year-old juvenile informed law enforcement officials that "marijuana could be found in a black pouch under the couch of the defendants['] home." She also stated that she had seen the defendant smoking marijuana and storing marijuana throughout the residence. Id. Finally, the twelve-year-old explained that she knew what marijuana looked and smelled like from being around it before. Id. Concluding that the affidavit was sufficient to establish probable cause, the Tennessee court stated:

> [T]he juvenile stated that she was familiar with the appearance and smell of marijuana. Unfortunately, it is not unreasonable to conclude that a twelve-year-old would be familiar with marijuana.... Even though the age of the informant is certainly relevant, the mere fact that the citizen was a juvenile, age 12, does not preclude a finding of reliability.

Affirmed.

DARDEN, J., and FRIEDLANDER, J., concur Id. At 296.

While we also conclude that C.R.'s age does not preclude a finding of reliability because it is not inconceivable that an eight-year-old would know what marijuana looks like, had Officer Cambell ased C.R. to describe that appearance of marijuana, this would be an easier case to resolve. See e.g. State v. Warroll, 22 P3d 182. 183. 185 (mont. 2001) (citing Stave v. Warroll, 976 P.2d 968, 971 (Mont 1999) (An eleven-year-old's statements that he personally observed marijuana growing on the defendant's property, that he know what marijuana looked like from seeing a plaint at his aunt's house and pictures on cigarette lighters, and his description of the difference between marijuana and tomato plants formed a substantial basis for concluding that probable cause supported the issuance of the search warrant.)).

CLERK
SUPREME COURT, COURT OF APPEALS, AND TAX COURT
STATE OF INDIANA
217 STAE HOUSE, INDIANAPOLIS, IN 46204
317-232-1930 • FAX 317-232-8365

David C. Lewis
Clerk

DALE ALLEN

5655 BROADWAY
MERRILLVILLE, IN 46410

25A05-0405-CR-00243
Lower Court Number:
25C010310FC73

RICHARD, CARL -V- STATE OF INDIANA

You are hereby notified that the SUPREME COURT has on this day 3/31/05

THIS MATTER HAS COME BEFORE THE INDIANA SUPREME COURT ON A PETITION TO TRANSER JURISDICTION FOLLOWING THE ISSUANCE OF A DECISION BY THE COURT OF APPEALS. THE PETITION WAS FILED PURSUANT TO APPELLATE RULE 57. THE COURT HAS REVIEWED THAT DECISION OF THE COURT OF APPEALS. ANY RECORD ON APPEAL THAT WAS SUBMITTED HAS BEEN MADE AVAILABLE TO THE COURT FOR REVIEW, ALONG WITH ANY AND ALL BRIEFS THAT MAY HAVE BEEN FILED IN THE COURT OF APPEALS AND ALL THE MATERIALS FILED IN CONNECTIOON WITH THE REQUEST TO TRANSFER JURISDICTION. EACH PARTICIPATING MEMBER OF THE COURT HAS VOTED ON THE PETITION. EACH PARTICIPATING MEMBER HAS HAD THE OPPORTUNITY

TO VOICE THAT JUSTICE'S VIEW ON THE CASE IN CONFERENCE WITH THE OTHER JUSTICES.

BEING DULY ADVISED, THE COURT NOW DENIES THE APPELLANT'S PETITION TO TRANSFER OF JURDICTION.

RANDALL T. SHEPART, CHIEF JUSTICE

ALL JUSTICES CONCUR, EXCEPT FOR SULLIVAN AND RUCKER, J.J., WHO VOTE TO GRANT TRANSFER. KM

WITNESS my name and the seal of said Court,
This 14TH day of JANUARY, 2005

_____

Clerk, Supreme Court, Court of
Appeals and Tax Count

CHRONOLOGICAL CASE SUMMARY
CRIMINAL DOCKET, FULTON CIRCUIT COURT

FOR CAUSE NO: 25C01-0310-FC-00073
RICHARD, CARL A
THE HONORABLE DOUGLAS B MORTON

ACTION: DATE FILED: 10/17/2003
ORIG FILE DT: 10/17/2003

ENTRY/FEE BOOK: PAGE:
BOOK: 0 PAGE: 0
BOOK: 0 PAGE: 0

ATTORNEYS		PARTIES
		PLAINTIFF
2920-25	RICHARD A BROWN 815 MAIN ST - ROOM 301 P O BOX 237 ROCHESTER IN 46975 574-223-4333	STATE OF INDIANA
252525-25	PROBATION OFFICER COURTHOUSE ROCHESTER IN 46975	
		DEFENDANT
10485-64	DALE ALLEN 5655 BROADWAY MERRILLVILLE IN 46410 219-981-3998	CARL A RICHARD 2183 W 500 N ROCHESTER IN 46975
23884-64	MATTHEW D BARRETT 5655 BROADWAY MERRILLVILLE IN 46410 219-981-3998	

FINANCIAL INFO

PAYOR: CARL RICHARD

COURT COSTS COUNTY	$36.00
COURT COSTS STATE	$84.00
LAW ENF CONT ED-3	$3.00
JURY PAY FEE-2	$2.00
CO INTERDICTION FEE 75%	$150.00
ST INTERDICTION FEE	$50.00
DOCUMENT STORAGE FEE	$2.00
AUTO RECORD KEEPING FEE	$7.00

CHRONOLOGICAL SUMMARY OF FILINGS AND PROCEEDINGS

10/17/2003 Notice: M RJO: Y Vol: 28 Pg: 140

Richard A. Brown files Appearance, Information for Dealing in Marijuana-Count I; Information for Dealing in Marijuana-Count II;

CHRONOLOGICAL CASE SUMMARY
CRIMINAL DOCKET, FULTON CIRCUIT COURT

FOR CAUSE NO: 25C01-0310-FC-00073
RICHARD, CARL A
THE HONORABLE DOUGLAS B MORTON

ACTION: DATE FILED: 10/17/2003
ORIG FILE DT: 10/17/2003

Information for Battery Resulting in Injury to a Law Enforcement Officer-Count III and Information for Resisting Law Enforcement-Count IV and Motion to Revoke Bail and also presents Probable Cause Affidavit. It is noted that an Order was signed for probable cause on October 14, 2003, but made of record this date.

10/20/2003 Notice: M RJO: Y Vol: 28 Pg: 142

Initial hearing held and the Court makes its Order on Initial Hearing and issues Discovery Order with pre-trial conference scheduled for November 24, 2003 at 11:00 a.m. and trial date of February 25, 2004 at 8:30 a.m. (Copy R.Brown and Hirschauer).
SKE 10-22-03

10/22/2003 Notice: M RJO: N

Cash and Surety Bond filed.

10/28/2003 Notice: M RJO: N

Dale Allen files Appearance and Defendant's Motion to Produce Evidence.

10/29/2003 Notice: M RJO: Y Vol: 28 Pg: 149

Court enters Order upon defendant's Motion for Discovery.
State files Record of Discovery.

10/30/2003 Notice: M RJO: N

Defendant files Motion to Set Bail. Pre-trial set for November 24, 2003 at 11:00 a.m.
This cause now scheduled for hearing upon defendant's Motion to be Let for Bail and State's Motion to Revoke Bail for 1:00 p.m., October 31, 2003. (Copy R.Brown and Dale Allen).
SKE 10-30-03

10/31/2003 Notice: M RJO: N

Hearing held and evidence and argument presented concerning bail issues. Cause taken under advisement.

11/03/2003 Notice: M RJO: Y Vol: 28 Pg: 151

The Court makes its Order upon bail issues. (copy entry and order to R.Brown, Allen & Probation)
SKE 11-3-03

11/12/2003 Notice: M RJO: N

CHRONOLOGICAL CASE SUMMARY
CRIMINAL DOCKET, FULTON CIRCUIT COURT

FOR CAUSE NO: 25C01-0310-FC-00073
RICHARD, CARL A
THE HONORABLE DOUGLAS B MORTON

ACTION: DATE FILED: 10/17/2003
ORIG FILE DT: 10/17/2003

Recognizance Bond filed. (copy attorneys) SKE 11-21-03

11/21/2003 Notice: M RJO: N

Court receives fax of Defendants Petition to Modify Bond Order.

11/24/2003 Notice: M RJO: N

Matthew D. Barrett files Appearance for defendant. It is noted this was ma
iled by certified mail with postmark of November 20, 2003.
Defendant files original Petition to Modify Bond Order.
Defendant appears in person and by counsel. By agreement of the parties r
pretrial conference is reset to 1-12-04 at 11:00 a.m.

11/24/2003 Notice: M RJO: Y Vol: 28 Pg: 164

The Court makes its Order rescheduling cause to January 12, 2004 at 11:00
a.m. for pre-trial and modifying bail conditions. (copy entry and order
to R. Brown, Allen and Probation).
SKE 11-25-03

12/26/2003 Notice: A RJO: N

Defendants file Defendants' Motion to Suppress Evidence; Defendants'
Memorandum of Law in Support of Defendants' Motion to Suppress Evidence
Defendants' Table of Contents to Their Memorandum of Law In Support of
Defendants' Motion to Suppress Evidence; Notice of Hearing to Suppress
Evidence and Defendants' Exhibits A-E.
It is noted this was mailed by certified mail with postmark of 12-22-03.

01/08/2004 Notice: M RJO: Y Vol: 29 Pg: 4

Court enters Notice of Hearing to Suppress Evidence. Hearing set for
February 10, 2004 at 2:00 p.m. (copy attorneys) SKE 1-12-04

01/12/2004 Notice: M RJO: N

Parties appear by counsel. cause now set for hearing on defendant's
motion to suppress on 2-10-04 at 2:00 p.m. (Copy R.Brown and Allen).
SKE 1-12-04

02/09/2004 Notice: M RJO: N

State's Memorandum In Opposition To Defendant's Motion To Suppress filed.

02/10/2004 Notice: M RJO: N

Motion to Suppress hearing held in conjunction with 25C01-0310-FC-00074.
Issues presented and cause taken under advisement with any further

CHRONOLOGICAL CASE SUMMARY
CRIMINAL DOCKET, FULTON CIRCUIT COURT

FOR CAUSE NO: 25C01-0310-FC-00073
RICHARD, CARL A
THE HONORABLE DOUGLAS B MORTON

ACTION: DATE FILED: 10/17/2003
ORIG FILE DT: 10/17/2003

response by counsel to be submitted not later than February 13 at noon. (Copy R.Brown and Allen).
SKE 2-10-04

02/11/2004 Notice: N RJO: N

The Court makes its Order concerning trial date, Motion to Suppress response date, and combining causes for trial. (Copy entry and order to R.Brown and Allen).
SKE 2-13-04

02/13/2004 Notice: N RJO: N

Defendant files Defendant's Verified Motion for Extension of Time to File a Reply to State's Memorandum in Opposition to Defendant's Motion to Suppress & Jury Trial Continuance. It is noted this was received by Express Mail with date of February 12, 2004. (copy Allen, R. Brown and Probation) SKE 2-13-04

02/18/2004 Notice: N RJO: Y Vol: 29 Pg: 27

Court enters Order. Jury trial consolidated with 25C01-0310-FC-00074 and set for jury trial on April 6, 2004 at 8:30 a.m. (copy Allen, R. Brown and Probation) SKE 2-24-04

02/19/2004 Notice: N RJO: N

Defendants file Defendants' Reply in Opposition to State's Memorandum in Opposition to Defendants' Motion to Suppress and Defendants' Table of Contents to Their Reply in Opposition to State's Memorandum in Opposition to Defendants' Motion to Suppress. It is noted this was mailed by Express Mail with date of 2-18-04.

02/20/2004 Notice: N RJO: N

State files State's Reply Memorandum.

02/23/2004 Notice: N RJO: N

Defendants file Defendants' Surreply to State's Reply Memorandum. It is noted this was received by certified mail with a postmark of February 20, 2004. (copy R. Brown, Allen and Probation) SKE 2-24-04

02/25/2004 Notice: N RJO: Y Vol: 29 Pg: 33

Court enters Order. Motion to Suppress is Denied. (copy R. Brown, Probation and Allen) SKE 3-1-04

03/01/2004 Notice: A RJO: N

CHRONOLOGICAL CASE SUMMARY
CRIMINAL DOCKET, FULTON CIRCUIT COURT

FOR CAUSE NO: 25C01-0310-FC-00073
RICHARD, CARL A
THE HONORABLE DOUGLAS B MORTON

ACTION: DATE FILED: 10/17/2003
ORIG FILE DT: 10/17/2003

Defendant, by counsel, file Defendants' Motion for Certification of Appeal of Interlocutory Order and Stay of Proceedings Pending Appeal. It is noted this was received by certified mail with postmark of February 27, 2004.

03/03/2004 Notice: M RJO: Y Vol: 29 Pg: 38

Court enters Order denying Motion for Certification. (copy attorneys) SKE 3-5-04

03/05/2004 Notice: M RJO: Y Vol: 29 Pg: 40

State files Motion to Revoke Bail.
Court enters Order granting Motion to Revoke Bail. (copy R. Brown, Probation and Allen) SKE 3-8-04

03/10/2004 Notice: M RJO: N

Attorney Dale Allen and Matthew Barrett enter their appearance on behalf of defendant. Defendant, by counsel, files Defendant's Motion in Opposition to the State's Motion to Revoke Bail. Defendant, by counsel, pleads not guilty to all charges, requests discovery, waives initial hearing and reserves right to trial by jury. (Copy Allen and R.Brown). SKE 3-19-04

03/23/2004 Notice: M RJO: N

Defendant files Defendant's Motion in Limine, Defendant's Motion to Separate Trial Witnesses and Defendant's Answer to Court's Order for Discovery.

03/24/2004 Notice: M RJO: Y Vol: 29 Pg: 51

The Court makes its Order for hearing on Motion in Limine for April 5, 2004 at 10:30 a.m. (Copy entry and order to R.Brown, Allen and Leon). SKE 3-26-04

04/01/2004 Notice: M RJO: Y

Defendant, by counsel, hereby waives defendant's right to trial by jury relative to Count I, Dealing in Marijuana and Count II, Dealing in Marijuana, both class "C" felony offenses.
Defendant further informs this Court that the State of Indiana has proffered a plea agreement, conjingent of course, upon this Court's approval, relative to Counts III & IV of this cause and the parties shall present said plea agreement, in writing, to this Court on Tuesday, April 6, 2004 at 1:30 a.m. EST.
Defendant further informs this Court that the parties are prepared to

CHRONOLOGICAL CASE SUMMARY
CRIMINAL DOCKET, FULTON CIRCUIT COURT

FOR CAUSE NO: 25C01-0310-FC-00073
RICHARD, CARL A
THE HONORABLE DOUGLAS B MORTON

ACTION: DATE FILED: 10/17/2003
ORIG FILE DT: 10/17/2003

present evidence and argument to the benefit on Counts I & II.
Court enters Order leaving Motion in Limine set for April 5, 2004 at 10:30 a.m. (copy attorneys) SKE 4-2-04

04/02/2004 Notice: M RJO: Y

State files Waiver of Jury Trial.
Court enters Order withdrawing jury call and setting trial to Court on Tuesday, April 6, 2004 at 1:30 p.m. (copy attorneys) SKE 4-2-04

04/05/2004 Notice: M RJO: N

By agreement of the parties, hearing on Motion in Limine is reset for 4-6-04 at 1:30 p.m. (Copy R.Brown and Allen).
SKE 4-5-04

04/06/2004 Notice: M RJO: Y

At hour appointed for trial, the parties submit proposed Plea Agreement as to Count III that anticipates dismissal of Count IV, leaving Count I and II for trial. Change of plea hearing held upon Count III and defendant submits checklist of rights. The Court makes its Order on Misdemeanor Change of Plea as to Count III. Trial to the Court held and the Court makes its findings of guilt upon both Count I and Count II all by written Order. Sentencing hearing scheduled for 9:00 a.m., April 28, 2004. (Copy entry and orders to R.Brown, Allen, and Probation).
SKE 4-8-04

04/21/2004 Notice: M RJO: N

Presentence Investigation Report filed.

04/28/2004 Notice: M DISPOSED: BT RJO: Y

Sentencing hearing held. Defendant by counsel supplements pre-sentence report with letters and affidavits which the Court deems added to the Pre-Sentence Report. Upon sentencing hearing, the Court makes its Sentencing Order. (Copy entry and order to R.Brown, Allen, and Sheriff).
SKE 4-30-04

04/30/2004 Notice: M RJO: N

Defendant files Notice of Appeal from Trial Court. It is noted this was mailed by certified mail with a postmark of April 29, 2004. (copy .. attorneys) SKE 5-3-04

06/07/2004 Notice: M RJO: N

Court Report files Notice of Filing of Transcript.

CHRONOLOGICAL CASE SUMMARY
CRIMINAL DOCKET, FULTON CIRCUIT COURT

FOR CAUSE NO: 25C01-0310-FC-00073
RICHARD, CARL A
THE HONORABLE DOUGLAS B MORTON

ACTION: DATE FILED: 10/17/2003
ORIG FILE DT: 10/17/2003

06/10/2004 Notice: M RJO: N

Clerk files Notice of Completion of Clerk's Record with Court of Appeals. (copy R. Brown and Allen) TLP 6-10-04

06/21/2004 Notice: M RJO: N

Defendant, by counsel, files Request for Copy Of Appellate Record and Transcript. Sent Transcript this date. (copy R. Brown and Allen) TLP 6-21-04

STATE OF INDIANA)
) SS:
COUNTY OF FULTON)

IN THE FULTON CIRCUIT COURT

CAUSE NO. 25C01-0310-FC- 13

STATE OF INDIANA

VS.

CARL A. RICHARD

FILED

OCT 17 2003

CLERK, FULTON CIRCUIT COURT

COUNT I

INFORMATION FOR DEALING IN MARIJUANA
(C- FELONY)

Matthew Campbell, being first duly sworn upon his oath says that:

On or about October 13th ,2003 in Fulton County, State of Indiana, Carl A. Richard ,did knowingly possess marijuana with the intent to deliver in an amount greater than ten(10) pounds .

All of which is Contrary to the form of the statute in such cases made and provided ,to wit: I.C. 35-48-4-10(a)(2)(c) and (b)(2),and against the peace and dignity of the State of Indiana.

COUNT II

INFORMATION FOR DEALING IN MARIJUANA
(C- FELONY)

Matthew Campbell, being first duly sworn upon his oath says that:

On or about October 13th ,2003 in Fulton County, State of Indiana, Carl A. Richard, did knowingly manufacture marijuana in an amount greater than ten(10) pounds .

All of which is Contrary to the form of the statute in such cases made and provided ,to wit: I.C. 35-48-4-10(a)(1) and (b)(2), and against the peace and dignity of the State of Indiana.

OFFICE OF PROSECUTOR
FULTON CIRCUIT
ROCHESTER, INDIANA

FILED

OCT 17 2003

Karen M. Shea FULTON CIRCUIT COURT

COUNT III

INFORMATION FOR BATTERY RESULTING IN INJURY TO A LAW ENFORCEMENT OFFICER
(D- FELONY)

Matthew Campbell, being first duly sworn upon his oath says that:

On or about October 14th ,2003 in Fulton County, State of Indiana, Carl A. Richard ,did knowingly touch Matthew Campbell, a Law Enforcement Officer, in a rude, insolent or angry manner resulting in injury, to wit: pain , and while said Officer was engaged in the execution of his Official duties .

All of which is Contrary to the form of the statute in such cases made and provided ,to wit: I.C. 35-42-2-1(2)(2)(A),and against the peace and dignity of the State of Indiana.

COUNT IV

INFORMATION FOR RESISTING LAW ENFORCEMENT
(A- MISDEMEANOR)

Matthew Campbell, being first duly sworn upon his oath says that:

On or about October 14th ,2003 in Fulton County, State of Indiana, Carl A. Richard ,did knowingly resist, obstruct or interfere with the authorized service or execution of criminal process, to-wit: the execution of an arrest warrant by Matthew Campbell, a Law Enforcement Officer.

All of which is Contrary to the form of the statute in such cases made and provided ,to wit: I.C. 35-43-3-3(2)(A),and against the peace and dignity of the State of Indiana.

M Campbell

Matthew Campbell

PROSECUTOR
9th CIRCUIT
CITY INDIANA

Subscribed and sworn to before me approved by me this 17th day of October 2003.

Richard A. Brown
Prosecuting Attorney
41st Judicial Circuit
Fulton County, Indiana

My Commission Expires:
December 31,2006

FILED

OCT 17 2003

CLERK, FULTON CIRCUIT COURT

000010

STATE OF INDIANA)
) SS:
COUNTY OF FULTON)

IN THE FULTON SUPEIOR COURT

CAUSE NO. 25C01- -MC-

AFFIDAVIT FOR SEARCH WARRANT

Matt Campbell, being first duly sworn, upon his oath says the following:

1. That he is a law enforcement officer with Rochester City Police.

2. That he believes and has good cause to believe that certain things, namely marijuana and items of contraband are concealed in or upon the following described property in Fulton County, Indiana:

   2183 W 500 N
   Rochester, IN 46975

   Including House and Barns and Outbuildings

3. Said items constitute evidence of the commission of the offense of Possession of Marijuana and Possession of Paraphernalia.

4. Affiant believes there is probable cause to search based upon the following facts:
   Patty Keim (Riddle School Counselor) contacted me on today's date. She stated that she was approached by a student by the name of Callie R. Richard and told her she had been in one her barns on Friday, October 10 after school. While in the barn she observed what she believed was marijuana. I advised Patty I would come to the school to speak with the student.
   At approximately 1:00PM I went to Riddle Elementary School to speak with Callie, Mrs. Keim, and Mrs. Johnson (School Principal). During the interview Callie again stated she had been in the barn on Friday and found what she believed was marijuana. She stated she knows what it is' because she has been around it before. Callie stated she was in the barn just to the east of her house with a U-shaped drive. She houses rabbits in this barn. She stated near her rabbit cages there are blue tarps and

under the tarps is located several plants drying. She also stated there is a blue tub that contains camouflage bags with the same type of plant material. Callie then stated that in the barn near this same barn was an upper area she gained access to by climbing a ladder. In this area she located more of the same type of plants drying.

I asked Callie if they had any marijuana in the house. She stated they always had marijuana in the drawer near the stove. She stated they kept it in a white case. She then spoke of a hidden room in the basement area near the furnace room. She stated this room had bi-fold doors and then remove items from in front of the panel and then go into the dim room. She stated she had been in the room before when there were plants growing. She is not aware if there are any plants in there at this time.

Wherefore affiant requests the Court to issue a search warrant directing the search for and seizure of the above-described property.

M Campbell

Affiant

I hereby affirm under penalties of perjury that the foregoing affidavit is true.

M Campbell

Affiant

State of Indiana)
) SS:
County of Fulton)

In The Fulton Superior Court

Cause No. 25001- -MC-

SEARCH WARRANT

To: Any Indiana Law Enforcement Officer

WHEREAS an affidavit has been filed with me that establishes probable cause, you are therefore authorized and ordered, in the name of the State of Indiana, with any necessary and proper assistance, to enter into or upon the following described property, to-wit:

2183 W 500 N Rochester, Fulton County, Indiana including the house, barns and all outbuildings.

and to there diligently search for the following described property:

Marijuana, paraphernalia and other illegal drug contraband.

You are further ordered to seize such property, or any part thereof, found on such search.

Dated this 13th day of October, 2003, at 1:58 P.M.

Judge, Fulton Superior Court

RETURN ON WARRANT

I, the undersigned, executed the foregoing search warrant on the 13 day of Oct, 2003, at 2:35 o'clock P .M. and seized the following items:

Misc Marijuana From Kitchen drawer - $126.00 Cash - 3 credit Cards - 1 Chuck book 2 smoking devices 1 gold business card Holder w/ 3 handrolled cigs 1 set of scales 1 Black Gym Bag w/ misc meth items and papers - stems Marijuana from Barns - 3 Duffle (Camo) Bags - 2 Black Plastic Rolled - 2 white Barrells - 2 Plastic Bags w/ green leaf + scales Pipe Rolling Paper Broken Pipe

Law Enforcement Officer

000013

CONTROL NO.

ROCHESTER CITY POLICE
PROPERTY RECORD AND RECEIPT

Investigating Officer: Matt Campbell PF 716 CASE/ITI: 10-03-439
Submitting Officer: M Campbell PF PROCEDURE #: 203649
Date & Time: 10-13-03 2:35 P From Whom: Cpl. Charla Richard
LOCATION: 2183 W 500 N COUNTY: Fulton
Witness To Recovery: Cpl Boyd Ofc Calvert Danny Richard
DETAILS: Search Warrant

ITEM #	Description: Include quantity, color, serial number or identifying marks
1	1 Sealed Plastic bag containing a small plastic bag of "Spades" on the bag containing a white powder substance.
2	1 Sealed Plastic bag containing a small plastic bag w/ a white powder substance.
3	1 sealed plastic bag containing 13 smoking devices
4	1 Sealed Plastic bag containing 2 pill bottles of misc pills.
5	1 Sealed Plastic envelope containing 2 white paper envelopes w/ "CHAD" Address 2183 W 500 N Rochester IN 46975
6	1 Sealed Plastic Bag containing 2 Acrylic smoking device - 1 smoking device - Rolling Papers
7	1 sealed Plastic Ziplock bag containing small Plastic bag with powder residue inside.
8	1 sealed Brown paper bag containing Black Gym bag with items listed.
9	1 Sealed plastic evidence bag containing Green Plant Material
10	1 sealed Plastic evidence bag containing Scales and small plastic bag w/ green plant material inside.
11	1 Sealed plastic bag containing green plant material and misc change
12	1 Sealed Plastic bag containing Papers referring to the Mouth of Crystal Meth.
13	1 sealed Plastic bag containing Checkbook - 3 credit cards smoking device Gold Colored Business card case $126.00 Cash.
14	1 Sealed Plastic bag containing 3 hand rolled cigarettes removed from the gold colored business card case in Item 13
15	1 Sealed Plastic bag containing green plant material removed from item 16
16	1 Sealed Plastic bag containing Plastic container w/ 2 Plastic bags 2 smoking devices and parts to Others. Rolling machine matches. misc.

TAKEN TO DISTRICT #_____ or AREA LAB #_____

ITEM #	Date/Time	From (Signature, PF)	To: Signature, PF	Location	Code	Remarks
1-33	10-13-03 5:15P	Ofc Calvert Matt Campbell	RPD Ev. Day	RPD	S	
	**********					
	**********					
	**********					
	**********					
	**********					
	**********					
	**********					

CODES: *C - Court *D - Destroyed *R - Released S - Stored SS - State Sale *T - Transferred

D00014

CONTROL NO

ROCHESTER CITY POLICE
PROPERTY RECORD AND RECEIPT

Investigating Officer _____ PE _____ CASE/ITT1

Submitting Officer _____ PE _____ INCIDENT # _____

Date & Time _____ From Whom _____

LOCATION _____ COUNTY _____

Witness To Recovery _____

DETAILS _____

ITEM #	Description: Include quantity, color, serial number or identifying marks
17	1 Sealed Plastic Bag containing green Plant material
18	1 Sealed Brown paper bag containing 2 White plastic bags w/ green plant Material inside
19	1 Sealed Plastic bag containing White Plastic bags, Twine, 2 pair of scissors
20	1 Sealed Plastic Bag Containing a smoking Device
21	1 Sealed Plastic Bag containing a paper bag of green plant material
22	1 Sealed Plastic Bag containing a second plastic bag of green plant material
23	1 White Bucket Containing stems + stalks
24	1 White Bucket Containing stems + stalks
25	1 Black Plastic bag containing green plant material
26	1 Cardboard box containing green Plant material
27	1 Cardboard box containing green Plant material
28	1 Sealed Plastic Bag containing green Plant material from Item 27
29	1 Cardboard box containing green plant material
30	1 Sealed Plastic bag containing green Plant material from Item 29
31	1 Sealed Plastic bag containing an White cloth Bag.
32	1 Sealed Brown Paper Bag Containing green plant material from Item 33
33	1 Green Mesh Duffle Containing Black Plastic sheeting used to cover the loft floor.

TAKEN TO DISTRICT # _____ or AREA LAB # _____

ITEM #	Date/Time	From: Signature, PE	To: Signature, PE	Location	Code	Remarks
	**********					
	**********					
	**********					
	**********					
	**********					
	**********					
	**********					
	**********					

CODES: *C - Court *R - Released SS - State Safe
*D - Destroyed S - Stored *T - Transferred

000015

ORIGINAL

STATE OF INDIANA	)	IN THE FULTON CIRCUIT COURT
	) SS:	
COUNTY OF FULTON	)	2003 TERM

STATE OF INDIANA	)	
	)	
	)	
vs.	)	CAUSE NUMBER
	)	25C01-0310-FC-00073
CARL RICHARD	)	

The deposition upon oral examination of

CORPORAL MATT A. CAMPBELL,

a witness produced and sworn before me, Gail Malm Armstrong, Notary Public for the State of Indiana, on Friday, December 5, 2003, in the Fulton County Courthouse, Fulton County Prosecutor's Office, 815 Main Street, Rochester, Indiana, 46975, pursuant to the Indiana Rules of Trial Procedure with written notice by the parties as to time, place and date. This deposition was taken on behalf of the Defendant in the above-captioned cause.

GAIL MALM ARMSTRONG
COURT REPORTER
2306 SOUTH COUNTY ROAD 550 WEST
LOGANSPORT, INDIANA 46947
574/652-2200 FAX ** 574/[illegible]

Appearances

ON BEHALF OF THE STATE OF INDIANA –

RICHARD A. BROWN, ESQUIRE
Prosecuting Attorney for Fulton County
Fulton County Courthouse
815 Main Street
Rochester, IN 46975

ON BEHALF OF THE DEFENDANT –

MATTHEW D. BARRETT, ESQUIRE
Allen Law Offices
701 E. Lincolnway
Valparaiso, IN 46383

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By Richard A. Brown –

object to the question, "Can you tell me the definition of probable cause?" 12

Corporal Matt A. Campbell, the witness herein, having been first duly sworn to testify to the truth, the whole truth and nothing but the truth, was examined and testified as follows:

THE REPORTER: Raise your right hand please.

[THE DEPONENT COMPLIED.]

THE REPORTER: Thank you. Do you solemnly swear or affirm that the testimony you are about to give in this cause will be the truth, the whole truth and nothing but the truth, so help you God?

THE DEPONENT: Yes.

THE REPORTER: Thank you.

DIRECT EXAMINATION

QUESTIONS BY MATTHEW D. BARRETT: 2:10 p.m.

Q. Okay, my name is Matthew Barrett. I'm one of Carl Richard's attorneys in this matter. Before we begin, I'd just like to go over some basic ground rules with you concerning this deposition. First, please try to speak clearly and avoid any nonverbal responses like the shaking your head. It's just difficult for the Court Reporter to get all that down.

Second, if you would just wait till I'm finished with my question, then I'll allow you to answer. Again, a lot of times it's like a conversation and we get to talking over each other and it's difficult for her to get that down, and finally and if you don't understand one of my questions or if you'd like me to rephrase it or if you think it's too vague, just ask me to do so and I'd be glad to hopefully do it in a more understandable form.

If you don't ask me to clarify any of my questions today, then I'm going to assume that you understand them and that you're making an

appropriate response. Do you understand all that?

A Yes.

Q Okay, please state your full legal name for the record.

A Matt Allen Campbell.

Q What's your residential address?

MR. BROWN: I don't think that's necessary, is it?

CONTINUATION OF DIRECT EXAMINATION BY MATTHEW D. BARRETT:

Q What's your business address?

A Three-twelve Main Street, Rochester, Indiana.

Q Okay, are you married?

A Yes.

Q Do you have any children?

A Yes.

Q How many children do you have?

A Three.

Q What's your date of birth?

A November 8th, 1969.

Q You ever given a deposition before?

A Yes.

Q How many times?

A Oh, I don't, I don't have a clue.

Q Okay, what was the substance of the, the general subject matter that you were giving depositions for?

A Most of them were narcotics-related.

Q Okay, are you presently under the influence of any drugs or alcohol today?

A No.

Q Have you ever suffered from any mental disease, defect, or disorder?

A No.

Q Have you ever consumed any types of illegal drugs?

A No.

Q Have you ever had any restraining order, order filed against you?

A No.

Q Where did you go to high school at?

A Pioneer High School.

Q Did you graduate?

A Yes.

Q What year did you graduate?

A Nineteen eighty-eight.

Q Did you go to college?

A Yes.

Q What was your major?

A Criminology.

Q What year did you graduate?

A Nineteen-ninety.

Q Currently a law enforcement officer?

A Yes.

Q What agency are you employed with?

A Rochester City Police.

Q What's your rank?

A Corporal.

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Q Have you ever held any other types of ranks at the Department?

A Patrolman.

Q What's the full name and rank of your supervisor?

A Immediate supervisor, I guess, would be Robert R. Daugherty. He's a Sergeant.

Q Okay, did you attend the Police Academy, I assume.

A Yes.

Q When did you attend the Academy?

A Nineteen ninety-three.

Q Where at?

A Pardon?

Q Where at?

A Plainfield.

Q Indiana?

A Yes.

Q Okay, what year did you graduate?

A The Academy?

Q Yes.

A Nineteen ninety-three.

Q You work anywhere when you attended the Academy?

A Akron Police Department.

Q I'm going to ask you a series of questions regarding your employment history, and I'd just like to define the term employment so when I use it we're both on the same page. At any time when I say the term employment, you're to assume that I'm talking about full-time or part-time. The

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employment also means whether or not your jobs were, you were an employee or like an independent contractor. Since your graduation from the Academy can you tell me the names of all law enforcement departments or agencies that you have been employed with?

A I believe Akron obviously and I think I worked part-time in Kewanna and then I believe, I believe Rochester's the only other place.

Q Have you ever been suspended or disciplined in any of these Departments?

A Yes.

Q Which ones?

A Rochester.

Q What were you suspended for or disciplined at Rochester?

A Conduct unbecoming, I believe, is what it was for.

Q When was this?

A I believe the incident occurred in December of last year. I, I believe my suspension was actually in, might have been January or possibly February. I'm not sure.

Q Two thousand two?

A Which?

Q Either or.

A The, the incident would have occurred in 2002.

Q Can you tell me about the incident?

A The, the suspension was actually for my outburst regarding the actions of another officer that I didn't agree with.

Q What was the name of the other officer?

A Jim Hubbard at the time.

FORM C-108-3 REPORTERS PAPER & MFG. CO. 800-626-4313

Q What was his rank?

A He's a Deputy.

Q Okay, what was the nature of your suspension?

A I guess I don't understand the nature. I, I was off for a day.

Q Yeah, you're off for a day?

A Yes.

Q Did you get paid?

A No, it was, it was--our suspensions are unpaid.

Q Were you ever disciplined for any other matter?

A I believe I, I got a letter, a written warning at one time.

Q Who was that from?

A Who was it from?

Q What Department?

A Rochester.

Q What was that for?

A I can't remember what the exact term was for. It, it might have also been conduct unbecoming. I'm not sure.

Q When was that? Do you recall?

A I don't recall that one. I'm going to say, I'm going to say probably about '96 but I'm not sure.

Q Any other incidents of discipline?

A No.

Q Have you ever had any type of private employment since your graduation from the Academy?

A I, I did work part-time as a construction worker for a while off and on. I

FORM C-100 JR REPORTERS PAPER & MFG. CO. 800-870-8313

guess.

Q Where was that at?

A Actually I worked for Gates Construction who used to live in, when I lived in Royal Center, Charlie Gates.

Q Gates?

A Gates, G-a-t-e-s, yes.

Q Okay.

A Then I worked for Danny Melton, Melton and Sons Construction.

Q Where are they from?

A Rochester and then actually I think I, I actually got paid from Dirkus Construction a few times too.

Q Where's Dirkus?

A In Rochester.

Q Okay, you still work there today?

A No, it's kind of a on-again/off-again. It's when they need help sometimes I'll help and, you know, it, it just—it's not that I was either terminated or anything else, just I guess not enough time on my part and they didn't need enough help on their part sometimes.

Q Okay, do you take continuing law enforcement education classes?

A Yes.

Q How often?

A Every year.

Q Where do you take them at?

A Just I guess it depends on what class I'm taking where it's at. Sometimes I'll go to the Academy. Sometimes I'll go to the Indianapolis—what they call

FORM C-100 - LAS REPORTERS PAPER & MFG. CO. 800-833-8313

the Public Agency Training Council. Sometimes I'll go to other Departments. I've been to other states. Just, I guess it just depends on where, where it takes me—Fort Wayne.

Q Okay, when you say every year, how often throughout the year do you take them?

A Oh, we, we have a minimum of sixteen hours. I'm, I'm usually well, well in the eighty hours to a hundred hours for training.

Q What's the subjects that have been covered in the past, subject matter of your education classes?

A I've been to sniper school. I've been to undercover narcotics school. I've been to hostage rescue, MP5 operator—I'm trying to think—less lethal force, distraction devices, chemical agents, OC spray.

Q Okay.

A Without having the whole list in front of me, I can't tell you everything.

Q That's okay. Okay, have you—are you trained in criminal search and seizure law?

A As far as—

Q Making arrests, obtaining warrants. Are you trained in that type of law?

A Sure, we get training at the Academy..

Q How much training do you receive in that area?

A I couldn't tell you, whatever the Academy—

Q A couple weeks?

A I, I don't know.

Q Okay.

A I attended the Academy in '93, over ten years ago. I have no idea how many

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hours were for what.

Q In these continuing law enforcement classes, have you ever had any classes covering that type of subject matter?

A Oh, when I, I know when I, I used to work a canine also. We had search and seizure--I've been to a few training, whether it be classes or seminars or whatever you want to call them and other than that, without looking at my résumé, I couldn't tell you when and where I've attended them.

Q Okay, are you familiar with the term probable cause?

A Yes.

Q Okay, can you tell me the definition of probable cause?

MR. BROWN: You know, I'm going to--what's the point of that question even in a discovery deposition?

MR. BARRETT: I want to know if he's competent in what, knowing what probable cause is.

MR. BROWN: What difference does it make whether he is or not?

MR. BARRETT: This is a discovery dep. I think I have a--I can investigate this.

MR. BROWN: Why don't you ask him what res judicata means or anything? I mean, what's the point of the witness knowing? It's--he either had probable cause or he didn't whether he knows what it is or not.

MR. BARRETT: I think it does matter if he, if he--he's the one that has to ascertain what probable cause is and I want to just simply--

MR. BROWN: Well, no, the judge is who ascertains what probable cause is.

MR. BARRETT: I'd just like to know his definition, if he knows what

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FORM C-100-A - REPORTERS PAPER & SUPPLY CO. 800-888-8310

the definition of probable cause is, what's the—are you objecting?

MR. BROWN: I am objecting. I—

CONTINUATION OF DIRECT EXAMINATION BY MATTHEW D. BARRETT:

Q You can go ahead and answer. He's—

A Pardon?

Q You can answer.

A Okay, can you repeat your question?

Q Sure. What is the definition of probable cause?

A I guess, I guess in my opinion the way I would put it is having enough whether it be information to give—are you asking me for my probable cause? Like he said, the—it's what—the information I take to a judge. If, if I feel I have enough information to take to a judge to, for him to approve—

Q Sure, Officer, let me, let me clarify. I'm not asking you for—

MR. BROWN: You're asking for a legal definition—

CONTINUATION OF DIRECT EXAMINATION BY MATTHEW D. BARRETT:

Q I'm just asking for your, for your opinion.

A I don't have a legal definition.

Q Okay, what is your opinion of probable cause?

A I was trying to give that to you.

Q Okay, go ahead.

A If, if I gather facts and information, I feel probable cause is—in my mind is when I have enough information to take to a judge for him to agree to sign the document that I have.

Q Okay, are you familiar with the requirements necessary to obtain a search warrant then?

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A Yes, you have to have probable cause.

Q Okay, can you kind of give me the steps you go through generally speaking when you obtain a search warrant?

A I gather information and I put it in a probable cause affidavit and I take it to the judge.

Q Okay, then he either approves or disapproves, right?

A Correct.

Q Okay, do you ever consult with the Prosecutor when you're doing this?

A I'd have to say at times I probably have at one time or another.

Q Okay, can you describe to me the purpose of the probable cause affidavit that you submitted in support of this?

A The purpose of the, the affidavit would be for the judge to review, I guess.

Q Okay, well, what's, what's the purpose of it? Why do you submit it?

A So he can review it and either agree to sign a, a search warrant or not, whether, I guess if it's a probable cause for a search warrant, if it's a probable cause for an arrest or what it might be.

Q Okay, what must be contained in the probable cause affidavit when you—

A Facts.

Q Okay, anything else?

A I guess I don't understand the other, any other question then.

Q Well, what do you—when you're generally speaking—

A That I'm, that I'm, I guess that I'm a law enforcement officer, that's usually in there. Are you talking a search warrant?

Q Yeah, no, the probable cause affidavit. Let me, let me clarify.

A For a search warrant.

FORM C-100 - A REPORTER'S PAPER & MFG. CO. 800-626-6313

Q Yes, generally speaking—I'm not referring to any specific case—when you, when you're drafting one or putting one together, what, what do you normally put in there? That's all I want, want to find out.

A Well, we have a form that it, it asks for our name—

Q Okay.

A —and, and if we are a law enforcement officer with which agency, asks for the address and asks for the items that we'll be looking for, then for the facts of the case or the facts of the, the information, I guess.

Q Okay, now when the facts or the information in the probable cause affidavit are based on hearsay like from an informant, okay, are you required to establish the reliability of the informant or to corroborate that information in some way?

A I guess it depends on the circumstances.

Q All right, but would you normally—generally speaking would you make an attempt to maybe corroborate of establish the reliability?

A I've obtained numerous search warrants, whether it be with informants, working with them undercover or whether it be with information that just I obtained from somebody, I guess. I don't understand what you mean by—

Q Well, I mean—

A —establish reliability. Can you give me some, some guidelines of where you're talking there?

Q Sure, sure, if you, if you, if you're ever unsure what I'm saying, just do like you're doing right now. Ask me. If, if you have an informant like an, an anonymous person coming with, to a tip with you [*sic*], do you normally investigate what they're saying to make sure that they're telling the truth,

you know, or to corroborate it somehow by taking additional investigative steps–

A I guess, I guess–

Q –generally speaking?

A –sometimes if it's possible, we'll do that, yeah.

Q Okay, is it important to establish the credibility of a witness?

A I think depending on the circumstances it can be, yes.

Q Okay, can you just give me a general idea how many times in your career you've drafted a probable cause affidavit?

A I don't have a clue.

Q Many times?

A Many.

Q Okay, has your request for a search warrant ever been rejected?

A Not that I can recall.

Q So every time you've ever submitted one, it's ususlly–it's been approved by the judge or magistrate.

A As far as I can recall. I don't, I don't ever recall one being rejected.

Q Okay, how often do you interact with children during the course of your duties as a law enforcement officer?

A I taught DARE for six years throughout the grade schools, so a lot.

Q Can you tell me what you, how you taught DARE? I mean, what is–

A The DARE program is the Drug Abuse Resistance Education program. I taught primarily to fifth graders from–I think I started in '90, late '94 or maybe early '95. I don't remember which and like I said, I taught for six years and I taught anywhere from–well, the primarily program was

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seventeen weeks long. I taught every fifth grade student that came through for six years and then I also gave what we called the secondary programs to K through—it'd been K through four at the time.

Q Where did you do this at?

A Well, at the time it was at Columbia and Riddle for a while and then the school combined as far as we had two separate K through fives and then they combined, and then we, we actually—when the school's combined, we, we dropped the K, one and two and then I just taught third, fourth, and fifth grade.

Q Okay, and you still do that today?

A No, no, when I, I started working undercover narcotics and I guess we dropped the DARE program.

Q Okay, as an officer have you ever assisted—and I'm not talking about this case too. Have you ever assisted the Welfare Department or Office of Family and Children or any other agency that works with children concerning matters?

A Yes.

Q Can you tell me about it?

A I, I am the Department's child abuse investigator. So I investigate, investigate child molesting cases, child abuse cases, I guess, if they happen in the city limits particularly and I guess any, anything else for that matter that—I guess if they feel that it, it takes—well, I guess, I guess if they want me to investigate a child case in any matter.

Q [redacted] can you approximate how many of these types of cases you've investigated?

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A Any case involving a child?

Q Yeah.

A I don't have a clue. I, I don't know.

Q Many, a lot?

A Many.

Q Generally speaking do children, say, eight, nine years of age or younger always tell the truth when you, when you, you know, talk with them about a case or something?

A I guess generally speaking?

Q Yeah, generally speaking.

A I would say generally speaking most of the time, yes, they do.

Q Okay, do they ever—have they ever had a tendency to fabricate things when you've spoke with them? You later find out or maybe go off on an imaginated, you know, imaginative story or something like that.

A Sure.

Q How often does that happen?

A I, I can't say—I don't know how often. I mean, it, it happens.

Q Have you ever been charged, arrested or convicted of any crime, infraction, ordinance violation?

A No.

Q Have you ever been named as a plaintiff or a defendant in a civil lawsuit?

A To tell you the truth, I don't remember if my name was actually in the tort claim that came through the city on that criminal gang deal--do you remember that—when they picked everybody at the Department basically?

MR. BROWN: I don't know either.

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FORM C-190 - 1-81 REPORTERS PAPER & MFG. CO. 800-626-6313

THE DEPONENT: We, we had a—the Department had a tort claim that—

CONTINUATION OF DIRECT EXAMINATION BY MATTHEW D. BARRETT:

Q Tort claim notice?

A Yeah, that we were being sued by some members of a gang that we had arrested and to tell you the truth, I don't—it was, it was bogus enough that I guess I didn't, I didn't even pay any attention if my name was on the list.

Q When was this?

A It'd been 2000 maybe or, or before.

MR. BROWN: Well, whatever you remember.

THE DEPONENT: I, I'm saying maybe, maybe 2000 or, or sometime before that, not far. I, I don't know for sure.

CONTINUATION OF DIRECT EXAMINATION BY MATTHEW D. BARRETT:

Q Just to the best of your memory. Okay, have you ever been accused of using excessive force on another law enforcement officer or a civilian?

A Excessive force on another law enforcement officer?

Q Assault and battery.

A On another law enforcement officer?

Q Yeah.

A Or civilian?

Q That's what I said.

A No.

Q Okay, have you or any officers under your command have ever had—have you ever had any evidence suppressed in a court?

A Any officers under my command?

FORM C-100 · LASER PORTERS PAPER & MFG. CO. 800-626-8213

Q You or any officers under your immediate command.

A I, I can't answer for those officers. I don't know if they have or not. I haven't been to all their cases.

Q All right.

A Have I? I, I honestly can't recall ever losing a suppression hearing right now if that gives you something to shoot for.

Q I'm just asking.

A Okay.

[AN EXHIBIT WAS MARKED AS DEFENDANT'S DEPOSITION EXHIBIT #A FOR PURPOSES OF IDENTIFICATION.]

Q I'm going to hand you a document marked as Defendant's Exhibit A. I'd just like you to take a moment and look it over and then just please identify it for me.

A It is the probable cause affidavit for a search warrant.

Q Okay, is that your signature on the second page?

A Yeah, a Xerox copy, yes.

Q What do you mean a Xerox copy?

A Well, I have a Xerox copy. It's not an original.

Q Right, but what I'm saying is is that your signature though?

A Yes, that would be a duplicate of my signature.

Q Okay, the document indicates that you visited Riddle Elementary School to interview Callie R. Richard; is that correct?

A Yes.

Q Okay, you state in the affidavit that you were responding to a telephone call from a school counselor, Patty Keim spelled K-e-i-m, regarding Callie; is that

FORM C-100 - LA REPORTERS PAPER & MFG. CO. 800-888-8313

right?

A I don't believe so. I don't see where you see it's a telephone call.

Q Well, you were responding—how, how did she contact you then? Let me—

A I was at a—I believe either suspension or an expulsion hearing for another student when she gave me this information. She was present during that expulsion hearing.

Q Okay, verbally?

A Yes.

Q Where was this at?

A That would have been at the Rochester Administrative Building, Rochester High School Administrative building.

Q Can you tell me the substance of that, those conversations?

A With, with Patty and I?

Q Yes.

A That she had a student that gave her some information about drugs. She wanted me to come and talk to her.

Q Okay, so based on what you wrote here in the affidavit, would it be fair to say that Callie herself did not personally contact you and request your presence at the school?

A Yeah, I guess that would be correct, yes.

Q Okay, do you recall what time Patty Keim spoke with you regarding this matter? I don't think it's indicated here in the affidavit, Officer.

A Well, I, I don't recall. I can't remember what time I was supposed to been at the expulsion hearing. It was after we actually ended the expulsion hearing is when she come up to me afterwards and told me this but I don't recall

FORM C-100 - JR REPORTERS PAPER & MFG. CO. 800-626-6313

what the actual time was.

Q What day was that on? Was it the same date that you did the search? Is that what it was?

A Yes.

Q Okay, I think it says here in, in the paragraph four, it says you went to the school at one. So would it be correct to say that or to assume that you spoke with Patty before one o'clock that day?

A Yes.

Q Okay, okay, now after she contacted you, did you take any type of investigative steps before you came to the school?

A No, I, I didn't even know the student's name that I was going to talk to, I don't believe, at that time.

Q Okay, should you have taken any type of investigative steps before you spoke with Callie?

A Well, I had to have some information to go on before I can investigate anything, I do.

Q Okay, so this was your first step.

A Yes.

Q Okay, now you arrived at the school at about one p.m. as you indicated, correct?

A Yes.

Q Okay, and this was on October 13th, 2003, the date of the search?

A That I would have been at the school?

Q Yes.

A I believe that's correct.

FORM C-100 - LAS REPORTERS PAPER & MFG. CO. 800-626-6313

Q All right, now specifically where at in the school did all this questioning take place?

A In the, in—I believe it's in, in Patty's office. I, I'm not sure if it's—it's the counselor's office. I'm assuming it's Patty's.

Q Okay, do you—without and you can, you can refer to any of these documents to refresh your me[illegible]y throughout this deposition but try to recall things independently. Do you independently recall how many other adults were present with you?

A I believe there was one other one that I—at this time I don't even recall who that was. I was too focused on talking to Callie at the time.

Q Okay, I think the affidavit says it was the Principal, Mrs. Johnson.

A Mrs. Johnson, probably right, yes.

Q Okay, okay, that was the other one. Were there any other children present besides Callie during the questioning?

A No.

Q Was the door closed during the interview?

A I don't recall. I, I don't know if it was closed behind us when we went in or not.

Q All right, well, how were you questioning? I mean, was there a table or were you standing or—

A She was—I think she was on a couch. I was sitting in—I don't know if it would, would have been—it seems to me it was one of the, the smaller, like the student chairs. It seemed it was pretty small and I believe Callie was sitting on a—I think it was a couch and Patty and Mrs. Johnson—I believe. Mrs. Johnson might have been sitting on the same couch. I don't remember

FORM C-100 - 5 REPORTERS PAPER & MFG. CO 800-626-4313

where Patty was seated exactly.

Q How close were you to Callie?

A Close enough I could hand her a pen and a paper and she could hand it back. I mean, within arm's reach I should say.

Q How about the other adults? How close were they?

A Oh—

Q You say one was sitting by her?

A Fairly close, you know, I guess, you know, close enough to be sitting on the same couch but—

Q Now—

A —within arm's reach, all of them I'd say.

Q Okay, now prior to this particular interview, did you or any other law enforcement officer ever speak with Callie regarding any of these matters?

A Not that I'm aware of.

Q Okay.

A I didn't. I don't know if—I'd assume nobody else had.

Q Describe to me what you were wearing when you spoke with Callie during the interview. By that I mean were you in full uniform?

A Oh, no, I, I work as an investigator and I don't wear a uniform. I wear plain clothes of whatever type, usually some kind of casual dress. That day, particular day I don't, I don't remember what I was wearing. Well, I take that back. I do kind of remember because the day we served the search warrant I had on a good pair of black slacks or pants, I guess. I had on black shoes and I believe I had on my bright blue button-down shirt with a yellow tie, I believe. I have no idea about a coat, if I even had one.

FORM C-100 — A REPORTER'S PAPER & MFG. CO. 800-626-4313

Q Were there any type of identifying marks of the Fulton County Police Department on your, on your clothes?

A I don't work for Fulton County Police Department.

Q Or wherever you were, you're, you're–

A Typically I would have my badge on my belt but I can't–I don't know if I did that day or not. Usually if I, if I'm dressed like that, I'll have a badge or so that way people know that I'm a police officer.

Q Did you have a firearm visibly holstered?

A Depending if I had my coat on or not. If I had some sort of coat on, I don't know. If I had a coat on, it would have been covered. If I had my coat off, it, it would have been holstered and on my side, yes.

Q Okay, did you bring any written questions with you as a guide to the school when you were questioning Callie?

A Written questions? No.

Q Okay, you were just doing it off the top of your head when you were investigating her?

A Yes.

Q All right, did you take any notes when you spoke with Callie?

A Yes.

Q Okay, what'd you do with those notes after the interview?

A I used them to type up my search warrant affidavit.

Q Do you still have possession of them?

A Yes.

Q Okay, did you ever give copies to anyone else?

A Notes?

FORM C-100 .AR REPORTERS PAPER & MFG. CO 800-638-6313

Q Yes.

A No.

Q Was any portion of this interview ever taped or video recorded by anyone?

A Not that I'm aware of. I don't—I'm assuming the school wouldn't do that and I didn't.

Q Okay, were you ever informed as to Callie's age at the time of your questioning?

A I believe I was. I, I, I can't remember it off the top of my head. I think it was either eight or, eight or ten. I don't know for sure.

Q Okay, the notice of detention says eight. So I'm just running off that.

A Okay, that, that,—

Q That sounds about right?

A —that's probably right then, yeah.

Q Okay, were you ever informed as to what grade level she was in during the interview?

A I'm sure I was but I don't—I mean, obviously she's at a school of third, fourth, and fifth graders. So I knew it had to be one of the three.

Q Third grade sound right?

A I'm sure if that's what you tell me.

Q Okay, can you describe to me what Callie's physical appearance is? How tall is she? How much would you approximate she would weigh?

A Oh, gosh, I'd have to probably say just a little under four foot maybe.

Q Okay.

A Weight, I don't know, maybe, maybe eighty pounds. I don't know. That's hard for me to say, I guess. I—

FORM C-100-L REPORTERS PAPER & MFG. CO. 800-328-6318

Q Sure, could you describe to me her body frame? Was she–

A slender, I mean, she's not heavyset or big-boned or anything like that.

Q Okay, can you describe to me in detail the types of questions that you were asking her during your interview?

A In the beginning I would have asked her, you know, how she, she came to know about some of the things she knew about and she–obviously she's, she talked about living there, having, having access, free access to every place she had been and that she had been out in the barns. You know, asked her, you know, what, what was it she found out there and if she knew what it was exactly and if she knew what that meant. Like if–she, she kept referring to marijuana and I said, asked her if she knew what that was and she said yes.

Q Did you ask her any personal questions about Carl Richard or her mother or anyone else, any individual person?

A I guess I don't know who you're talking about by Carla.

Q Carl.

A Carl.

Q Her father.

A Yeah, Carl is her father. Charla is her stepmom and Carmen is her mother.

Q All right, did you ask any questions regarding those people, those specific people?

A Yes, I'm sure I would have.

Q Okay.

A I would have asked her if, if her, if her dad was, had been in the barn, if Charla had been in the barn. I don't believe I asked about Carmen because

FORM C-100 - LA. REPORTERS PAPER & MFG. CO. 800-626-8910

I didn't—at this point she had nothing to do with it other than being her mother.

Q Okay, did you ever ask her if her, if her father or stepmother ever, you know, used this, these illegal substances?

A I don't remember if I asked her or if she offered that to me. I can't remember at this point during—

Q Okay.

A —the conversation if I had asked her the question or if she went ahead and offered it when, when I asked her how she knew what this, what it was. She, she, she commented that other people had come over to the house and smoked it with Charla and her dad.

Q Do you recall any other types of questions you were asking her besides those?

A I guess I don't—other types, no. I mean, it was all related to this pretty much as far as I remember.

Q Did you ever indicate to Callie what you probably planned to do with the information that she was providing you?

A I don't remember at that point telling her for fear of her getting home before we had an opportunity to be at the house. I didn't want her to go home and, and be worried about it. I don't, I don't remember telling her what we intended to do.

Q Did she ever ask you what you were going to do with that information?

A I don't recall her even asking.

MR. BARRETT: Do you need to change that tape?

THE REPORTER: No, it does it automatically.

FORM C-100-1 REPORTERS PAPER & MFG. CO. 800-525-6213

CONTINUATION OF DIRECT EXAMINATION BY MATTHEW D. BARRETT:

Q Okay, did, did Callie ever indicate to you as to why she provided this information to, to Ms. Keim?

A Keim?

Q Keim, I keep saying that wrong but I mean Keim.

A Not as far as I'm aware. She didn't, she didn't tell me why she was doing it.

Q Did Miss Keim ever tell you maybe why Callie gave this information to her? Did she ever—any conversations with Callie regarding the, you know, why Callie was saying this?

A I don't believe she told me why and she—I, I don't know that, I don't know that we ever really knew why for sure. There, there—I believe there were some questions as far as abuse but I, I don't know that that was—I don't know that that was a reason why.

Q What do you mean by abuse?

A There were some accusations of child abuse.

Q Did you—you didn't include that in your affidavit. Why didn't you do that for?

A I didn't know that I'd be searching for anything to do with child abuse.

Q Okay.

A I mean, as far as I was concerned, that didn't really have anything to do with the search warrant.

Q Did you ever ask Callie as to whether or not she had ever used any marijuana or illegal drugs herself?

A I, I don't actually believe I remember asking Callie that. She's eight.

FORM C-100 - LAB REPORTERS PAPER & MFG. CO. 800-826-0313

Q Now in paragraph four of the first page of your affidavit, I'll let you find it. As you referenced before here earlier, you state that Callie found what she believed to be marijuana in the barn and your, you further stated that "she knows what it is because she had been around it before." Is that correct?

A Yes, that's what it says.

Q Now assuming this is in fact what she said, is it possible that she could have been mistaken regarding the identification of this substance alleged to be marijuana?

A Well, I guess you're saying is it possible. I guess as I've said before in other testimony, anything's possible.

Q Okay, did you ever investigate as to whether or not, make any other type of investigations to ascertain if she knew what she was talking about?

A I guess other than exposing her to marijuana and, and there was no way that I was going to do that, I guess, and I didn't feel that exposing her to marijuana would be a, a way to do that.

Q Well, the statement says that, "she knows what it is because she's been around it before," but it doesn't provide any dates or places of her alleged prior observations. Would you agree?

A No, it does not provide any dates or specific incidents.

Q Did you ever ask her about specific—

A When she told me that she'd been around it when, when her father and, and Charla and them had smoked it before, I, I took that as enough at that point.

Q Okay, and just getting kind of back where we were speaking about, do you believe that a young child of her age is, is qualified to make an assessment like that as to whether or not it is marijuana or not? She's eight years old.

FORM U-100-1 : REPORTERS PAPER & MFG. CO. 800-638-8313

A I think giving her living conditions, I think she was qualified, yes.

Q What, what do you mean by given her living condition?

A When we found marijuana in the house, it was in a kitchen drawer which she had immediate access to. It was in her stepparents' or her parents' dressers which I'm sure if, as you were a kid, you probably went through your mom's dresser drawers too and/or dad's. So—

Q Okay, but that was—I'm sorry. Go ahead.

A —that, that was—I guess at her age she probably did the same thing. So yeah, I think, I think she is, is—for a child of eight years old, I think she is overly qualified as compared to one that shouldn't be, yes.

Q Well, that was after the fact but I'm talking about the time that you were making this assessment right here when you were drafting your probable cause. Do you think she was qualified at the time to make that assessment because at the time—

A Yes.

Q —you didn't know it.

A At the time that she did that, at the time I got the statement from her, I felt that she was qualified to give this information.

Q Well, how was she qualified?

A You asked me if I felt she was and I felt she was.

Q Well, what—how do you feel? I mean, what were you relying on?

A I was relying on the history, I guess, of information that had come from—whether it be numerous rumors or what you want to call it, prior arrests, information that has come from—whether it be the Richards' farm corporation if you want to call it or from the Carl Richard's residence,

FORM C-100 - LAS REPORTERS PAPER & MFG. CO. 800-426-4313

however you'd like to call it. I, I felt that she was qualified in that matter, that if she's living there around it all the time, then she'd be qualified to tell about it.

Q So based on rumors and prior arrests. Were these arrests – what were these arrests?

A The – I believe the Richards were arrested some years ago for – and probably actually before Callie was born for marijuana and given the, like I said, from working undercover narcotics, there's, there always seems to be a flow of information, whether you can follow up on it or not as far as getting an actual search warrant. There's always a flow of information and, and after having always that constant flow of information coming from, quote, the Richards' area, like I said, with her being a, a resident, figuring her having been around it constantly.

Q Can you – what, what are these rumors that you're talking about?

A Oh, we, we go out and we do marijuana eradication every year and we always seem to pick some marijuana off of some, some Richards' property, never connected to him or at least never have but we're always cultivating or not cultivating but I guess harvesting or whatever you'd like to call it, eradicating marijuana plants from the area out there and it's always thought to be the Richards'. Like I said, we never connected it to them. Earlier in the year we had made a, an indoor marijuana grow arrest in which the, the gentleman we got that from was an employee of the Richards' farm, and I guess with all the information coming in at this time, it seemed that she was well-qualified to give the information she gave.

Q But well, I'm not trying to trip you up here. I'm just trying to find the

connection. How does rumors, prior arrests, unrelated arrests and just these all unconnected matters qualify Callie? I mean, how does that qualify her? I mean, you give me—you know what I mean?

A She lives in the house.

Q Okay, well, how does she—I mean—

A When you lived in your pr nts' house did you know what your parents were involved in?

Q I'm not answering your questions today. I'm just asking you.

A And I'm trying to give you an answer. I mean, that, that's an obvious answer.

Q Okay.

A If you lived in your house, you know what your parents are involved in. She lived in her house. She knew what her parents were involved in.

Q Okay, is it possible that the substance in the barn before you—trying to keep in mind here that this is before—keep your frame of mind before you made the search, okay? The substance in the barn, could it have been hay or corn stalks or some other type of—

A There was a barn full of hay,—

Q —plant material?

A —another barn that was absolutely full of hay, straw, hay, straw. I guess I'm not a farmer. I don't know a lot about the difference-

Q Okay.

A —and she didn't tell me that there was bales of hay up in a loft. She, she knew there was one barn that was absolutely full. Well, she didn't say full but it had a lot in it and I mean, she didn't make reference to that being the

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FORM C-100-14 REPORTERS PAPER & MFG. CO 800-626-4910

same substance.

Q But is it possible it could have been though?

A Again, I'm going to say anything's possible.

Q Okay, and my next question is this stuff that you were talking about that was found in her home, she said she thought it was marijuana but could it have been something else? I mean, it was found in the kitchen, right? It could have been like an oregano or parsley flakes or some type of spice. I mean, what are we talking about here?

A I suppose if you keep that in your—

Q Is it possible?

A —bedroom dresser drawer, it might be.

Q I'm not talking about the bedroom dresser drawer. I'm talking about when you referenced here in the kitchen.

A But if she'd seen it in the kitchen, she also probably would have seen it in the bedroom. I guess if you keep oregano in the kitchen and in the bedroom, that would be possible.

Q I'm not asking you about the bedroom. I'm asking you specifically about the kitchen. Is it possible it could have been something else?

A You're asking me what she, what she—if you, if I felt it was possible she believed that was oregano because it was found in the kitchen and I'm saying if, if that was oregano in the kitchen, then it must be oregano in the bath, bedroom because it was the same substance.

Q Okay, did, did Miss Keim—am I saying that right again?

A Yes.

Q I keep forgetting her pronunciation—or Principal Johnson had ever asked

FORM C-100 - LA REPORTERS PAPER & MFG. CO. 800-422-8818

Callie any questions during this interview?

A Oh, I, I'm sure they would have, yeah. I mean, they, they got their – the welfare of a child involved in this also.

Q Okay, do you recall the conversations?

A No, I don't, I don't recall the conversations between them. They was more focused on her health and welfare more than anything, I believe.

Q Okay, was Callie ever visibly nervous or shy? Did she appear scared?

A Didn't really appear to be, not, not really like I'd thought, thought she should be.

Q What made you think that she should be?

A Well, I guess if I was turning in my parents for possession of marijuana, I'd be a little bit scared to go home.

Q Was she ever crying?

A I don't even believe she ever cried.

Q How long did you question Callie at the school?

A Fifteen, maybe twenty minutes.

Q Did you ever speak to her at any time after the meeting at the school concluded but before you served the search warrant?

A No, once I left the school, that was the last contact I had with her.

[AN EXHIBIT WAS MARKED AS DEFENDANT'S DEPOSITION EXHIBIT #B FOR PURPOSES OF IDENTIFICATION.]

Q This is Plaintiff's [*sic*] Exhibit B. Just take a second to look at it. Then identify it for me please.

A This is a search warrant what – I guess the return or whatever you would like to call it, the actual search warrant that the judge signed and then the return

FORM C-100 - © REPORTERS PAPER & MFG. CO. 800-626-4313

on the warrant on the bottom.

Q Okay, now the search warrant's dated October 13th, 2002.

A Two thousand three?

Q Three, I'm sorry. I meant that.

A Yes.

Q And at the time of the issuance, it was, I believe, one fifty-eight p.m.; is that correct?

A That's what it says, yes.

Q Okay, now in the affidavit for the search warrant you state that you interviewed Callie at about one p.m., right?

A Correct.

Q So this was on the same day.

A Yes.

Q Okay, what did you do in between that time when you left the school and up to, you know, before the judge issued this? What were you doing?

A I prepared this first document that you handed me which is A.

Q Okay, now it appears from your affidavit for the search warrant that you use the information that Callie supposedly provided you as the sole basis for applying for this warrant; is that correct?

A Yes.

Q Okay, did you ever take in this time frame here but after you left the school and up to the, when the judge issued this warrant, did you take any type of investigative steps to confirm or corroborate any of the things that Callie told you?

A I felt I had enough probable cause to go ahead and file for the search warrant

FORM C-100 - U REPORTERS PAPER & MFG. CO. 800-626-4910

which I did and which the judge signed.

Q Okay, could you have—could you have investigated further? I know you said you thought you had enough—

A I guess I could have went and done a knock-and-talk like we've done in the past but this seems to be a much stronger way to go.

Q Okay, so what Callie told you was—there was nothing else that, that you submitted to the judge to get this search warrant, correct?

A You're—I might, I might have had a picture. I don't remember if I had a picture attached, an aerial photo or not of the, the actual property.

Q Okay.

A If anything else was attached, that probably would have been it.

Q Is it possible that Callie's mother, Carmen Richard, could have told her to say something to spite Carl?

A I, I don't live in that house. I don't know what she tells her.

Q But is it possible that somebody could—

A Well, again, anything's possible.

Q Okay, that's what I'm trying to ask you. Did you know that Carl was divorced from Carmen Richard?

A You know, I, I, I knew there was a paternity suit going on between Carmen, Carl and Charla. So I guess at this point in time I didn't know whose was who. So I think I later found out for sure who, you know, Carmen was actually married to Carl at one point but that at that time I wasn't sure who was who. So—

Q Okay.

A —I knew, I knew Carl—I didn't know Carmen and Carl were ever actually

FORM C-100-LAS REPORTERS PAPER & MFG. CO. 800-626-4910

married, I guess. I knew they had kids together. That's how we have—

Q Okay.

A —Callie, Chloe and maybe Clover, I guess. That's yet to be determined, I guess.

Q And is it possible that maybe she was saying something to hurt her father out of spite because maybe something was going on in this paternity matter?

A Back to anything's possible, I guess.

Q Okay, did you ever advise Callie of any Miranda rights prior to your questioning?

A Callie? No.

Q Why, why didn't you advise her of any type of rights?

A Well, I didn't have her in custody and she wasn't a suspect. She wasn't being interrogated. She was a witness.

Q Why wasn't she in custody?

A Well, she was at school. She wasn't in my custody. I mean, she was, she was attending school.

Q What do you mean "my custody"? Can you give me an idea what you mean?

A I didn't—she didn't, she wasn't restricted of her freedom by, by my means. She was, she was attending school and she, she spoke to a counselor and a counselor called me and we spoke to her voluntarily.

Q Do you know who summoned her to the interview?

A I don't—

Q Did you ever speak to one, anybody concerning how she was, you know, told to come meet, meet you?

A I, I—no.

FORM C-100 - LA. REPORTERS PAPER & MFG. CO. 800-626-8319

Q Okay, did you ever get permission from any of her parents, either of her parents to interview her

A No.

Q Why not?

A Didn't feel it was necessary at that point.

Q Are you required to obtain permission from her parents before questioning her?

A Under those circumstances, I don't believe so at school. Otherwise the, the Principal and/or counselor would have done so.

Q So you think there's an exception to getting permission from parents before questioning their child?

A I, I believe give, given the circumstances, yes. It depends on whether you have to have permission or not.

Q Okay, are you familiar with what is commonly referred to as Indiana's juvenile waiver of rights statute? It's a generic name.

A Are, are you talking about the form that we typically read to a juvenile when we have them in custody and read them their rights along with their parents?

Q I suppose that's related to it but I'm just asking you are you familiar with the waiver of rights statute as an officer?

A The, the actual statutes? I, I guess I've probably looked at them at a time or another but I, I can't say that sitting here that I could give you verbatim or even paraphrase what they might say.

[AN EXHIBIT WAS MARKED AS DEFENDANT'S DEPOSITION EXHIBIT #C FOR PURPOSES OF IDENTIFICATION.]

Q Okay, handing you Defendant's Exhibit C. Just take a second and look it

FORM C-103 - LAW FRONTIER PAPER & MFG. CO. (219)879-5313

over and identify it for me.

A That would be a prepared copy of my narrative and case information.

Q Concerning the Richard case?

A Yeah.

Q Yes? You can take a second and look—

A Yeah, it appears to be the, the, the same.

Q Okay, now just to the best of your ability, why don't you take me on a step-by-step walk-through when you arrived at the residence and conducted the search up to when it ended. You can refer to this to refresh your memory but try to do it independently here.

A When we arrived, Sheriff Calvert and I approached the door and other officers were in the process of securing other areas of the property for, for not knowing who might or might not be around. I believe it was Sergeant Beaird with the Sheriff's Department informed us that he had located someone at the point—we didn't know who—on the west side of the residence.

I don't remember if he summoned to her or if she walked around the corner or, or what for sure but Charla, who I knew as Charla, eventually walked around the corner and was congenial, polite, you know. I think she said, "What's up?" or, you know, something to that effect, and I advised her at that time of the search warrant for the residence and provided it to her, and I asked her if we could step inside in order to conduct our business.

Upon going inside she, she took a copy of the search warrant, it was read to her and told her that we was going to search the residence and the property, and I, I, I believe at that time her concern was, was with her kids,

at least Quentin and Carly Rae. I believe they were sleeping at the time, and she, she had asked if she could take them to another residence so as to not be disturbed and interrupted by, by the activities and at that time I told her that yes, she could take the kids and leave if she wanted to and—or I gave her the option she could let them sleep and we would work around them and try to be as quiet as possible and she took the option to, to let the kids sleep and for us to basically search around them, and she was—I don't want—she wasn't agitated. She was again, very congenial.

She wanted to—she kept wanting to move around the residence and, and for our safety, we had requested her not to go from room to room because we had to keep somebody with her all the time for our safety.

Q Did you not want her to leave the house?

A I didn't care if she left the house. I just didn't want her wandering around the residence while we were trying to search. I had already told her she was free to go and take the kids if she wanted to and she chose not to. She then asked if she could change her clothes and I said, I said we had—I guess for our terms, cleared a room being the bathroom and what I mean by cleared is made sure we'd searched it for any contraband and weapons or anything like that to make sure she didn't have any access to them, that she could get some clothes and go in there and change, and I, I believe eventually that was, that was done.

We cleared—I believe it was the bathroom right next to the, to the master bedroom and, and she eventually changed into different clothes and she sat at the—I guess the kitchen table is what you call it, the table there in the kitchen area and actually spent quite a bit of time on the phone while

FORM C-100-3 REPORTERS PAPER & MFG. CO. 800-638-8312

we were conducting our search.

I believe I started my search area at the, the door that actually, the entry door that goes into the garage and worked my way—I guess if you was facing the door, worked my way to the right through the kitchen cabinets and on around including the refrigerator, in that area until I got to the, the drawer as indicated by the sink where I found, found the, the marijuana and/or the, the white container, I believe is what it—white plastic container I might have called it. I don't know.

Located it, photographed it, bagged it for evidence, so on and so forth, and I can't remember if it was right at that point right now or if it was after I'd started searching another area, they had called me back to the bedroom where they located marijuana in the bedroom drawer or a dresser drawer in the bedroom and then a smoking device was on another, on another dresser. I believe that was photographed and bagged.

I believe really fairly close to that point, I don't—like I said, I don't remember if it was—I believe it was shortly after that I went out and I had told the, the Sheriff Roy Calvert—who I believe was sitting with Charla at the time—that she was going to be placed into custody and, and charged with the possession of marijuana, and she was advised of her rights and immediately after she requested to speak with an attorney, and that was—I think that's when I, I went outside. I think, I think Trooper Shaver might have come in and, and said that they requested my assistance outside in some of the outbuildings outside.

So I went outside, started going through some of the outbuildings outside, went to, specifically to the, to the locations that Callie told me

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FORM C-100-L REPORTERS PAPER & MFG. CO. 800-426-6313

about which was the same with the kitchen drawer which when she gave me the information, she—in the kitchen drawer by the sink there'd be a white container and there'd be marijuana in there and low and behold, that's what we discovered, and the same thing with the outbuildings.

The barn by the rabbit cages, she said there would be, I believe, camouflage bags or some sort of bags, I believe she told us, that would have, had marijuana in them that was near rabbit cages, and sure enough there was marijuana in the, out there in the bags near the rabbit cages in a box, I believe, is what she—some sort of box or tub or something she told me, and then she said out in the other barn in the, in what she'd said—I think she called it the cow lot or I can't remember exactly her terminology but I went to, went to the barn and it actually had all the hay in it at first because trying to stay somewhat systematic so we didn't just start running every different direction, went through that barn.

It had a lot of hay and cut across the, the cattle lot because all the cows were focused on all the other officers who over in the other area because we were told—I think Charla might have even said that one of the cows out there wasn't very nice, and so while it was focused in that direction, I went around to—I don't know if it's a corn crib or what you actually officially call them. Like I said, I'm not a farmer.

It kind of had open-air sides, slats I guess. You can—if you look just right, you can see through the barn basically, and I went into there and I went up into the loft of it, the, the top portion over the center and I found a, large quantities of marijuana stems and, and bags and I guess so on and so forth.

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Q Did you ever test any of the stuff on scene or was it determined later?

A At, at—no, at the residence we, it wasn't tested, no.

Q Did you test any, any type of drug paraphernalia, you know, any type of drug substance on the, on the scene?

A At, at the residence we tested—when we conducted the rest of our search, I, I—once we got done outside, I went back into the residence to help finish inside. In, in conducting the search into the basement and in finding the, the, quote, secret room, whatever he'd like to call it, bomb shelter or whatever he may be calling it these days, I don't know.

Q Is that inside the residence?

A Inside the residence behind the panel inside the closet, move the shelves, open the door, concrete walls, located some, some buckets with dirt and—

Q How did you know about that room?

A Pardon?

Q How did you know about that room?

A Callie told me about it.

Q Okay.

A And marijuana on the floor. Again, collected it, photographed it, same thing, conducted the rest of the search throughout the rest of the rooms and inside a room in—it would have been the—if I—I don't, I don't know that I have my—it's the last room, the last bedroom in the basement.

I, I want to say it's to the east but I'm not sure even with the, how the house is laid out which way I was facing but I think that's right, bedroom to the east and to the north. Located in the closet in there was a, a black—I guess I'd call it a gym bag—that had letters written to Char which would be

Charla at the address of the, the house there, 2183 West, 500 North, I believe, and also located in there in that bag was numerous items related to the use of crystal methamphetamine and some small baggies that had a white powder residue and which we did test for crystal meth and which it tested positive for crystal meth. So to answer your question if we ever field tested anything on the scene, yes, and it would have been for crystal meth.

Q So what happened next after all this?

A I—Carl arrived home somewhere in this time period. I don't remember exactly when it was. I just at one point was told that, "Hey, Carl's here," and he was out back on the patio area with, with Carly Rae and I don't—I think they still had Charla upstairs at the time, and I went outside and spoke to Carl about what was going on and again, Carl was congenial and cooperative and told him what was happening, what was going on and that he needed to see about finding somebody to watch his children as he was going to be arrested for possession of marijuana, and that Charla was going to be arrested also for the possession of marijuana and possession of a Schedule II controlled substance, and he, he—I think he made the comment, something about, "Well, what'd Charla say about the kids or somebody watching the kids?" and I said well, I hadn't gotten that far yet to ask her because we just hadn't made it there yet.

Q Okay.

A I just ran into him first.

Q What happened next after that?

A I, I think Charla might have come downstairs where me, Carl and I were still talking about it, and they kind of conversed between themselves about who

FORM C-100-1 REPORTERS PAPER & SUPPLY CO. 800-628-4319

was coming to get the kids and they made arrangements and I believe, I believe Tracy Pocock, which would have been Charla's sister-in-law, came and got Carly Rae and to tell the truth, I don't know where Quentin—I think Quentin might have went with Tracy at the time also. I'm not, I'm not sure where Quentin went for sure.

I know they were gone actually before I, before I got to really find out. I believe the Sheriff had been talking to them upstairs and I believe—I think it's Carl's sister, Rita, which would have been Aunt Rita was going to care for Callie and Chloe, Carl's biological children at that point and I knew all the children were taken care of and, and at that point we had decided to, it was best to go ahead and transport Carl and/or Charla to, to the jail and proceed with paperwork, I guess.

Q What time was it when you left?

A When, when I left actually? I left somewhere between four-thirty and five. I can't remember exactly what time it was. It was somewhere in that neighborhood.

Q Were there other officers out there when you left that were still—

A I believe we all left about the same time.

Q Okay.

A You know, there was, there's still people around. I know there was—they went ahead and started to transport Charla and Carl. I don't, I don't think they rode together but to tell you the truth, I wasn't out there when they put them in the vehicles to go. So I don't know who rode with who and so—but yes, the other supportive officers would have been in the vicinity. I know I talked to Detective Reichert and made arrangements with him to, to meet

FORM C-150 - LABS SPORTSMEN PAPER & MFG. CO. 800-638-6310

him at our evidence bay so we could exchange custody of the evidence right in through the evidence bay together.

Q Okay, let me back up and just ask you some questions about the search. When you were conducting a search when you were inside the residence, did any of the officers ever come inside from the outside and advise you that they couldn't find anything inside any of the barns or outhouses?

A I believe Trooper Shaver come in. I don't remember if it was him or Sergeant Beaird. I spoke to both of them off and on regularly. One of them advised that, right off the bat that they had found something and the other one had said, said that they didn't find everything that, that I was advised that was supposed to be there.

Q Okay, then what did you do?

A And that's, that's—I think that's about the point that they said they, they want my help outside. So that's about the point that I went outside and discovered the things that we had been told exactly where they were.

Q How long did it take you to discover them?

A In the one barn, probably, oh, five or ten minutes. I think the officers were concentrated on a barn, on the barn, a—there's kind of two sides to the barn, I guess, and they were all concentrated on one side of the barn because I had told them about a, I believe, a, a ladder. So they were in an area where there was a ladder and just was focused on that and said, "Well, here's the ladder that we think you're talking about," and I said, "I don't think this is the right spot." So it took me a few minutes to get everything straight and—

Q How many barns or outbuildings are there on this property?

FORM C-120-U REPORTERS PAPER & MFG. CO. 630-628-6313

A I think—I guess you would consider them three is what I would say.

Q Is there a main barn?

A I, I don't know what they would call the main barn.

Q Like the large barn?

A They're actually two of them that are fairly large and to tell you the truth, I don't know—again, to me a barn's a barn. I don't know what goes on in, in any of them.

Q Okay, can you tell me how you entered the barns? I mean, were they locked or had you—

A No, none of the barns were locked. They either had open access or the only barn that had anything remotely as a door was the, the corn crib area. I suppose that was to keep the cows out.

Q Did you or any other officers ever break any of these barn or outhouse doors?

A Break them?

Q Break them.

A We—as far as the door, it was just a piece of wood that was kind of laid over, propped up with another piece of wood. So I wouldn't say we broke them. Moved them.

Q Okay, so you—there was no damage to the door structure itself.

A No, not that I'm aware of.

Q Okay, on page three of your report, about the geographic center, you state that you told or excuse me. Okay, hold on a minute. Okay, about, about the center of page three of your report you first indicate that Carl arrived on the scene as you've already previously indicated today. You state that you told

FORM C-100 - LASE PORTER PAPER & MFG CO. 800-631-6313

him that you wanted to talk to him about the marijuana located in the barn. Do you see—

A Yes, yes, yes, yes.

Q —see where I am?

A Yes.

Q Okay, there's no indication in your report that you advised him of any type of Miranda rights at that time; is that correct?

A Oh, at that point I hadn't.

Q Okay, why didn't you advise him of any of those—

A I—again, I didn't—he wasn't actually in custody at that point when I went outside to first talk to him.

Q Was he—would he have been permitted to leave the, the scene?

A Right at that point there? Probably not.

Q Okay, was that an incriminating question?

A Well, I guess it would have been if he would have given me an answer.

Q Okay, now I think we've already discussed some of this. Towards the bottom then on, on the lower half of page three, you, you're describing all these conversations that you're having with Carl concerning his children and Charla's use of meth.

A Um-hmm.

Q Do you see kind of where I am?

A I think so, yes.

Q It's kind of that whole general paragraph.

A Yeah, where it talked about the freaks?

Q Right, the freaks.

REPORTERS PAPER & MFG. CO. 800-626-6313

A Um-hmm.

Q Again, it doesn't appear that he was being uncooperative or resisted arrest. I think you earlier commented he was congenial and cooperative.

A He, he was, yes.

Q Okay, so did he ever give you any type of trouble on the day of the search?

A The day of the search, absolutely not.

Q Okay.

A None.

Q Now let's, let's shift to the next day on October 14th and I think the next page kind of starts covering that. The next day you and Erica Baughman—am I saying that right?

A I think you're pretty close, Baughman or Baughman.

Q All right.

A Yeah.

Q Phonetically—went out to Carl's property to remove the, the Richard children, correct?

A Well, not, not specifically to remove the children. We went out to notify them of the removal of the children.

Q Oh.

A We had already—we had figured, obtained custody of the children and place them in placement. So no, we didn't go out there to remove the children. All we went out there, just to deliver the notifications.

Q Okay, so the children were not going to be taken that day, right? You were just serving a notice.

A They, they were already removed.

FORM C. ASER REPORTERS PAPER & MFG. CO. 800-426-4010

Q Okay.

A The children—what we believed at the time, Chloe or not—excuse me not—well, I guess I'll start with Chloe. Chloe and Callie were with Carmen from what we understood or assumed would be from school. We had called the school, made contact with them, made contact with Carmen and, and Carmen was supposed to get the, those two from school, and Quentin, I believe, was in custody of his father, Wayne, and Carly Rae—I'm trying to remember all these names. Carly Rae was in the custody of Carol, I believe at the time, which is Charla's mother, and we had made arrangements for all of those people to maintain that custody. The only question was between Carol and Tracy Pocock of who was going to keep Carly Rae.

Q They had custody but I think it's mentioned in here that Carl, when he showed up, that he had the young one, the one-year old in his arm?

A Yes.

Q Okay.

A To, to my surprise.

Q Why was it to your surprise?

A Well, we'd already left Carly Rae with Carol in, in her care and went to his house to notify him that he, that she was going to remain in, either in her care or in Tracy's care and then he walked in the door with her. So to—at that point as far as I was concerned, she was in the custody of Carol and then when Carl walked in with her, that was something, a bridge that we was going to have to cross because we'd already, as far as we were concerned, removed the children from the residence, and that's what we were wanting to avoid was a confrontation.

REPORTER'S PAPER & MFG. CO. 800-[illegible]

Q So you would have probably ended up removing that child then, that one-year old.

A Why sure. We already had a court order to do so.

Q Okay, okay, now can you tell me about the conversations that you had with Erica Baughman before you went out there that day?

A Oh, I told her that she didn't want to go out there by herself to deliver these notifications.

Q She worked for the Welfare Department?

A Well, Welfare,—

Q Child—

A —Child Protective Services, Fulton—

Q Right.

A —County DFC.

Q Okay.

A You name it.

Q Okay, go ahead then.

A I told her that she—when, when we discussed the removal of the children because of the—well, I guess not only for the abuse reasons but for the, the manufacture of drugs on the property by statute and got a court order signed by Judge Morton to remove the children, that I told her she didn't want to go out there by herself to remove the children, and I told her I would assist her in doing that since it was already a part of my case.

Q Before you went out there to the property with her, did you ever advise any other officer to maybe stand by in case there would be trouble?

A I, I didn't tell them to stand by. I called, I called my station and told them

FORM C-100 - LAB REPORTERS PAPER & MFG. CO. 800-626-4313

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where I was going just in case. It's standard procedure but I guess in this case I just felt it was probably a little bit more necessary than, than normal and then I called, I believe I called Officer Carie Brouyette or Deputy Brouyette at the County and told him that, "Hey, I'm, I'm going out here just, just so you know where I'm at," and that was, and that was about it. I didn't tell him to come out in the area or stand by or anything. I just wanted them to know where I was.

Q When you arrived out there, did you ever see him like parked down the road or anything like that?

A No, as far as I knew, I was the only one in the area.

Q Okay, have you ever delivered a notice of detention before?

A I—may have been early in my career but not, not, I mean, I can't recall doing one at this point in time right now, no.

Q Okay, describe to me again kind of in step by step what happened once you got out there with Erica, just what the events that occurred.

A Well, when I, when I first got out there, we didn't expect anybody to be home. We knew there was a warrant—I knew there was a warrant for Charla for, for arson, and so we, we actually figured she would be avoiding us. So I didn't actually expect anybody to answer the door.

I figured Carl was working on the farm, you know. That's part of his duties. So I told Erica, just in case, I said, you know, given the day before I didn't figure they were real happy with us. So I told her to wait in the car and I would try to make contact with somebody at the residence, and when we pulled in the drive, I noticed another vehicle sitting kind of up and to the left on a cement slab area. It was a pickup truck of some sort and I can't,

FORM C-199-D REPORTERS PAPER & MFG. CO. 800-888-8319

can't tell you for sure what even color it was, but there was a gentleman in it. I thought, well, maybe that's Carl by chance. You know, I didn't know why he'd be sitting there but maybe he just pulled in too.

So I pulled in and exited my vehicle and went up to the person in the truck. I believe he told me his name was Kevin and I said, "Well, okay, is—have you seen Carl? Is Carl around?" He said, "No," he said, "I just come down here myself to check on him." I said, "Okay," and I said, "Have you been up to the door yet?" and he said, "Nope, just getting ready to walk up there." I said, "I'll walk up there with you."

So we both went up to the door together and I think at first he knocked on it. We waited a few minutes and then I knocked on it and waited a couple more minutes and Kevin said, "Well," I think he said, "I'm going to take off." I said, "Okay." Now I actually started to walk away and was going to go get the papers from Erica and just stick them in the door and I thought well, I'll rap on it one more time. So I knocked on the door one more time and waited, you know, a shorter time than I did the first time and started to walk away towards the car again, and I think as I actually got down off the first step, the door come open.

Well, I turned around and Charla was standing at the door and said—I believe her, her words were something to the effect of "What do you want now?" and I told her that we had some paperwork that we needed to, to, to give her. At that point I hadn't told her what it was yet, just told her I had some paperwork for her, and I motioned for Erica to come up from the car and she did and she brought the paperwork up, and I asked Charla if we could step in and talk to her to, you know, it was raining and pretty nasty

FORM C-100-LA REPORTERS PAPER & MFG. CO. 800-426-6313

out, and she kind of hesitated and I said, "Well," I said, "I just thought we'd get in out of the rain and, you know, out of the weather," and she, she opened the door and let us come in, and then I asked her if we could turn a light on because it was fairly dark in there then and—because she had shut the door back up, and we—she searched around trying to flip on a light and, and I don't know for what purpose or reason but none of the lights would come on.

So we were kind of, I guess, it wasn't dark to where you couldn't see but it was, it was, you know, darker than I'd like normal to read, and I told her that we had a, a notice for her children and provided her copies of the paperwork and then I told her that we had a arrest warrant for arson for her and she began to question me about what I was talking about with the arson, and I said, "Look, it's not my case. I don't know really anything about it other than there's another warrant for you and you're going to have to be, you know, taken back to jail for it," and she kind of threw some paperwork around and, and got, I guess, discourteous and was, was becoming agitated and about the time Carl walked in the door.

Well, actually I guess I seen a truck come in the yard first, one that I didn't recognize and at that time I thought, okay, I figured at that point Carl's probably home but I didn't know, have any idea if he drove a car or a truck or what, and so a truck pulled in and a short time later Carl come through the door carrying Carly Rae, and like I said, that, that was my biggest surprise of the day was seeing him come through the door with her, her.

I thought okay, and he, he immediately handed Carly Rae off to Charla

FORM C-100 - R REPORTERS PAPER & MFG. CO. 800-626-5518

as she was telling him at the same time, "They're taking our kids," and he, he began to question, you know, what was going on and, and she explained to him that we, we were going to take custody of the kids and, and that I had a another warrant for arson for her and, and he asked, you know, what that was all about and she, she again said, "I don't know what, what they're talking about," and he, he then focused on me and handed, like I said, handed—he finished handing Carly Rae off to Charla and he actually started coming toward me and calling me a liar and raising his voice and becoming more and more violent as, I guess verbally violent at first at one point and called me a liar numerous times and, and said, made the statement like, "You told me you wasn't going to charge me with a 8 felony," I think is what he said or the, the meth charge or something.

I don't remember exactly what it was and I told him that that was a mistake and, you know, that shouldn't have happened and tried to explain it to him and asked him to calm down so we could speak about it, and he eventually put his hands on me and grabbed a hold of me and, and pushed me up against the, the door.

Q What do you mean that he put your hands—

A He grabbed me—

Q Describe to me what he—

A —he grabbed me by the—well, what would be your lapels (indicating) and kind of held me—

Q Did you have a coat on that day?

A Yeah, oh, yeah, yeah, I had a coat, a some—it might have been my yellow coat that I'm wearing now. I don't remember for sure if I had it on or not,—

FORM C-100 - L REPORTERS PAPER & MFG. CO. 800-626-6313

Q Okay.

A —which one I had on but I had, yeah, I had some sort of—no, I remember which one it was. It was a tan, a brown, tan one, brownish-tan. It was a lighter coat and he grabbed me by that and had pushed, slammed—I guess I don't how you want to describe it—up against the—it was a door but I think it was kind of like the—it was either off to the side of the door or right about the door jamb or there, maybe there's a side window to the door.

I don't even know for sure because it was behind me but I could feel it, and he kept pushing me against the wall and, and kind of pushing me against it, then pulling me out a little bit and pushing me back against it and raised his fist numerous times as if he was going to hit me and, and I, I figured then that it was, it was getting pretty ugly, and so I again, tried talking to him, I guess tried, tried talking him, talking him down more than anything and trying to get him to calm down and understand that there was a mistake made and, you know, "You're not being charged with the B felony."

It's just the possession charge and he, he, like I said, he was focused on, on the, on—he felt that I was dishonest with him and, and so I, like I said, I tried to explain to him that that wasn't the case. There was a mistake somewhere but I didn't know where it was made and—

Q About the charge?

A About the charge, yeah,—

Q Okay.

A —and I told him that, you know, I, I, I didn't know how it happened or what happened but it—I agreed that he, he wasn't supposed to be charged with

FORM C-100 - LS REPORTERS PAPER & MFG. CO. 800-626-4910

that, and it didn't seem to matter to him one way or the other what I had to say. He just kept calling me a liar and, and he eventually pulled his fist back after doing it numerous times and, and struck me in the chest, about, about middle of the chest.

Q How hard?

A Hard enough that it hurt. I guess I don't know how hard the guy can actually hit physically. I'm guessing pretty difficult.

Q Did it leave a bruise or any mark?

A Didn't leave a bruise, didn't leave a mark. I'm—I got to be honest. I'm not the type that bruises or marks very easy but he didn't leave a bruise or mark but a substantial amount of pain.

Q Did you go seek medical attention?

A No, I didn't seek metal, medical attention, no broken bones or anything. So I mean—

Q Just enough—

A —if it's a bruise, it's going to, it's going to heal. I mean, there's nothing you can do for a bruise.

Q So it was just kind of enough to hurt at the moment.

A Enough to hurt at the moment and for a, for a while afterwards. The next day I was sore. You know, I took an aspirin, you know, that kind of stuff to make, make any discomfort go away. So it wasn't anything serious.

Q Okay, so what happened next?

A He, he had done that and he then, like I said, he, he was irate enough that he just kept yelling for us to get out of his residence at this point. He said, "Leave my house. Leave my house." He pulled me away from the wall and

FORM C-100 - LAW FRONTIER PAPER & SUPP. CO. 800-829-4313

opened the door and then physically pushed me—turned me around and pushed me in the back out the door and as he was kind of going out the door behind me pushing me, he turned back to Erica who was standing near the door and said, "And get that fat hog out of here," and she didn't need to be told twice and left the residence. She beelined for the car and which I started walking toward the car.

Then while he kept—he was behind pushing me in the back on the way out to the car and I grabbed my—I had my radio, my portable in my pants pocket—I don't remember right or left—grabbed my portable and called in that I needed assistance out at the residence and he, he made the comment, something about, "Go ahead and call the SWAT team," or something to that effect, and I told him, I said, "That's, that's not the case. That's not what I was doing," and I eventually made it to my car and told Erica—he turned and went back inside at this point and told Erica to stay in the car and lock the doors and I, I got into the car and actually retrieved a weapon from my trunk and—

Q What was the weapon?

A The weapon was what's called an Agent K UMP. It's a forty-caliber hand or weapon, I guess, and I waited at the rear of my car just, I guess, they, they went back in the residence and closed the door. I think I advised, I think, Fulton County—I can't remember if I called them or Rochester—advised them that, what had happened, that, that battery on an officer and that they had confined or secluded themselves in the house or something to that effect, and I waited at the trunk of my car for other officers to show up, and I think about the time Carie Brouyette pulled into the drive, Deputy, I, I looked over

FORM C-180 - U REPORTERS PAPER & MFG. CO. 800-528-4213

the top of my car and could see Carl and Charla carrying Carly Rae getting into the, the same truck that I had seen pull in the yard earlier and it was faced northbound toward the road.

So I—well, there's another gentleman over there too who I didn't recognize, didn't know who that was, and so I, I talked to or hollered at Carie Brouyette because he was, I think, just getting out of his car or, or had just gotten out, thinking that he'd be able to get his car in front of that vehicle to keep it from leaving and, and he, he wasn't able to respond in time before they had gotten it started. So that's when I, I moved over in front of the truck in which Carl, Charla and Carly Rae were in—not in a child seat by the way—but got over there in front of them and ordered them at gunpoint to stop the vehicle and numerous times told him to get out of the vehicle and, you know, I, I think I made the comment, "Don't do this. Stop the vehicle. Get out. Get out of the truck." Numerous times I ordered him to, to stop and get out.

Eventually, I mean, I—it seems like hours but I, I know it was just a matter of either seconds or a minute or two went by before he exited the vehicle and I ordered him, once he exited the vehicle, to get down on the ground and he, he failed to comply with that. He actually went to the bed of the truck and reached over the side and, and at that point not knowing for sure what he was going to pull out, he's still at gunpoint and ordered him to stop and, and get on the ground and didn't do so, and at one point he walked toward the front of the truck toward me and kind of put his arms out to the side and he says, "I'm unarmed. I'm unarmed," and then as I'm still ordering him to lay on the ground, he, he retreated back around to the rear

of the truck and the whole time Charla's sitting in the truck.

He went back around to the rear of the truck and, and toward his house. I think he made the comment, something to the effect of he's, he's not laying on the ground because it's raining or something to that effect or "It's all wet," maybe. I'm not sure and he was, he was stopped on the passenger side of the truck toward the house by Deputy Conley, Walker Conley, and Walker or Deputy Conley kind of stopped him there and began to speak with him and, and proceeded to take him into custody from there and at that time Carie Brouyette was at the truck taking Charla into custody.

Q And that pretty much ended the whole incident, correct?

A Pretty much, yeah. The time when, when he was in truck and I was in front of it, he, he had it in gear, actually started rolling at one point in gear and, and then stopped when I, when I come in front of the truck.

Q How, how soon was it before you received your backup assistance--

A It was--actually--

Q --from the time you radioed for help?

A --it was fairly quickly. I mean, I called for assistance and it was within, I'm going to say two or three minutes probably. I--

Q Okay; were they in the area or how did they--

A I, I have no idea. After the fact, I guess, I found out that they were--Walker and Carie had actually decided to come out to Charla's house to see if they could serve the, the arson warrant on her because it was actually Walker's case but I--

Q Did you--

A --they weren't, they weren't, I guess they weren't in the area. I think, I think

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I heard Walker say that he had just turned off of 31 onto, onto 450 maybe.

Q Considering how you'd just been out there the day before and you searched his whole, you know, his residence and his barns and all that, do you think it would have been maybe more, a little more appropriate if another officer had came out to serve that notice just to keep, you know, the peace?

A Well, you know, your, your other partner, I think he is, made a comment during our bond hearing that–

Q You're referring to Mr. Allen?

A Pardon?

Q Are you referring to–

A Yes, Mr. Allen, that's him. That he, he referred to me as being at their wedding, my wife being a, a long-time friend of Charla's and they have acquainted our house, as in been visitors in my house, sat at my kitchen table. So I guess at the time I figured, you know, if–given all the circumstances, I thought well, it certainly can't hurt for me to go out there and it's my job.

Q But my question was do you think someone, it may have been a little more appropriate for someone else to do it?

A Well–

MR. BROWN: Are you talking, are you talking now in hindsight or are you asking now if hindsight's the better thing? Before he couldn't look ahead. Are you asking him now to look ahead and decide?

MR. BARRETT: I'm just asking him at the time should he–on the 14th should he have had maybe someone else go out instead of him because the day before you'd just been out there.

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FORM C-100 - 3A REPORTERS PAPER & SUPS. CO. 800-624-6315

MR. BROWN: And, and that tells you what? What does that tell you if he–

MR. BARRETT: I, I'm asking him the question.

CONTINUATION OF DIRECT EXAMINATION BY MATTHEW D. BARRETT:

Q I'm just asking your opinion which should have been more appropriate?

MR. BROWN: His opinion as of now?

MR. BARRETT: At the–sure.

MR. BROWN: Or before he went out?

MR. BARRETT: His opinion right now, should, should it have been more appropriate?

MR. BROWN: Go ahead.

A Okay, my opinion now? I would have to say no because I think they would have gotten the same reaction no matter which officer went out there and I wouldn't put any other officer in, in, in jeopardy that I wouldn't put myself in.

CONTINUATION OF DIRECT EXAMINATION BY MATTHEW D. BARRETT:

Q Okay, now you were investigating the search. You, you obtained the probable cause affidavit and all that. Were you required to be with Miss Baughman or could someone else have went with her?

A I'm assuming they, they, they could have. I don't know. I didn't ask. I've never asked another officer to do something that was my responsibility or my duty or–

Q Okay, but my question was were you required to be with her or was, or was–were you assigned to her by a superior officer or something?

A No, no.

FORM C-10R TER REPORTERS PAPER & MFG. CO. 800-638-8313

Q Who made the decision for you to go out with her?

A I did.

Q Okay, now prior to the 13th and the 14th, had you have, have you ever had any occasion to be out there on that property before?

A Yes.

Q I think you referenced a wedding.

A Yes, I was out there for their wedding.

Q Okay, how—why were you invited?

A My, my wife and Charla were—I think you could say probably best friends, best friends through high school and, you know, Charla was present at my wedding and with, with my wife and, and I—and I guess they reciprocated and invited us to their wedding.

Q Okay, are they still friends today?

A That would probably be a difficult question for me to say. It, it's, it's very difficult to call somebody that has, has done what they have done friends but I'm also a, a loyal type person that I wouldn't necessarily discard them as friends.

Q Do they still speak together, I mean, or do things together?

A Oh, I would have to say probably not right now. There's another warrant for Charla. So if they're speaking—

Q Right.

A —together, then, then I won't be very happy about it but—

MR. BROWN: I'd kind of like to know that myself.

THE DEPONENT: Yeah, but I would have to—

CONTINUATION OF DIRECT EXAMINATION BY MATTHEW D. BARRETT:

Q That's what I'm asking you.

A And I'd have to say probably not.

Q Okay, would—did then Charla ever tell your wife anything about drugs or anything like that?

A Not that I'm aware of.

Q Okay.

A I mean, if she did, then I, again, I'd like to know and, and my wife and I are, are honest with each other and I think she would tell me if, if she did. You know, I think both of us know that Charla has or had been involved at one point and—but as far as having any direct information, not that I'm aware of.

Q What's your wife's name again?

A Rebecca.

Q Rebecca, all right. Has—did Charla ever express any opinion to Rebecca about her views of meth or law enforcement officers?

A Um—

Q Is she a very opinionated on those types of issues?

A I'd have to say probably but, you know, other than maybe making the occasional comment that she thinks marijuana ought to be legalized, not that, not that I'm, I guess I'm aware of really.

Q Okay, did you ever speak with Charla about any things like that?

A Oh, no, she didn't talk about it with me too much. I can't, I can't ever remember really talking to her about, you know, drugs and narcotics in any way.

Q Okay, besides that wedding, were you ever out there at any other time?

A I can't recall any time ever being out there. In fact, when we went to the

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wedding. I wasn't even sure where they lived. So I'd have to say no.

Q When you were out there at the wedding, did you ever speak to Carl?

A Oh, yeah.

Q What, what'd you guys talk about?

A Oh, we talked about his concrete floor. He was very proud of his basement concrete floor and, and just, I mean, concrete work and, you know, kind of stuff that he's involved in and we talked about, about his multimillion dollar milking barn, I think's what they call it, you know, his business basically as far as milking and cows and concrete.

Q Did he show you around the–

A His house, yeah, he–

Q I'm sorry.

A –kind of–let's see. I think he showed–I don't know if he showed us everything. I mean, we talked about his concrete floor in the basement. I think Charla may have actually taken us upstairs and, you know, showed us the kitchen area and that kind of stuff.

Q Were you ever showed the basement?

A Yeah, we were–most of it took place in the basement.

Q Oh, the wedding?

A Yeah.

Q Okay, were you ever given a tour or showed around the barns or any of that–

A No, we never went to any outbuildings.

Q You were, you were shown around the home, correct?

A The house, yeah.

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Q Okay, when was that wedding?

A I don't know.

Q Can you speculate?

A I'm going to guess they've been married for over a year but I couldn't tell you for how long. I know Carly Rae's just turned a year old. So I, I really don't—I don't have a clue, you know.

Q Okay.

A I don't—I have my own anniversary to worry about, not hers.

Q I know, I know the feeling. Do you know Carl's ex-wife Carmen Richard?

A I know who she is now. At the time I don't think I'd ever met her before.

Q Okay, did you know anybody that had ever spoke to her—

A Well, I'm sure I—

Q —that would have relayed information to you?

A Oh, anybody that relayed—yes.

Q Who was that?

A Trooper Jeff Carmen had relayed information. I don't know—it wasn't directly to me. I think it was relayed to—I don't know if it was to the narcotics guy at the time or if it was to Department in general that some information was relayed.

Q What was that information?

A Something about marijuana being in the, on the property was all I know at that time. I mean, it wasn't enough to, to take an ex-wife's word for it that as far as we knew had no connection to him other than kids going back and forth.

Q Do you recall when this was?

A Within a few weeks before this, this actual search warrant took place.

Q Okay, did anybody ever investigate the allegation?

A Other than I think we drove by and looked, you know, at the property from, from afar and there was nothing to, to lead us to believe any, any further at that point.

Q Okay, what is your opinion of Carl Richard as a person?

A As a person? I think he's a funny guy and I mean funny as in he's, he's, he's, he's funny to talk to. I—before this incident I would have called him a nice guy. I got, I get no—I guess I, I think he, I think he can be a good father, can be. I think he loves his children. I, I have, I have some respect for Carl. I don't have respect for what he's done or may be doing. I don't know for sure what he's up to now but I, I do have a certain amount of respect for him as, as far as, as far as the family goes, I think. I think he, like I said, I think he cares for his children as best he knows how.

Q What's your opinion of Charla Richard?

A I think she needs some help.

Q What kind of help?

A Whether it be drug rehab treatment or, or I don't know, violence counseling. I'm not sure what all she, she needs at this point. I just think she needs some help to get straightened out.

Q Why are you saying that for?

A Well, you know, there's accusations that she, she burnt somebody's car. There's, there's, you know, accusations that she's abused children that live in her house and, you know, she, she went to a treatment center and didn't follow through. So I—

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Q These are all accusations?

A Well, I guess I'd have to call them accusations. She hasn't been convicted of, of any drug use or, you know. She hasn't been convicted of any abuse and as far as leaving the, the treatment center, I don't know that it's an accusation as much as what it is a well-known fact that she's gone.

Q Have you ever heard of a person—I think you may have even referenced her—Bonnie Bradley?

A I, I did reference her. That's supposed to be the vehicle that, I believe, Charla burnt.

Q That's the owner of the vehicle?

A I believe so.

Q Okay, did you ever speak to Bonnie Bradley?

A No, that's not my case. That, that's the one that I referred to Walker Conley—

Q Okay.

A —investigating that case.

Q Do you have nay knowledge as to whether Bonnie had ever been a house guest at the Richard residence?

A I don't have a clue. I, I can't say I know Bonnie if she walked in the door.

Q Do you know a son of hers by the name of T.J. Kelly, I believe?

A Yeah, okay, I didn't know that was her son but yeah, I know T., who T.J. is.

Q I think it's her son.

A It could be. If you're telling me it is, I'll believe you. I don't know.

Q I'm assuming it is. What's—who's, who's T.J. Kelly?

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A I think at one time he worked at what they call the farm which is the Richards farm. Other than that, I think I ran into him. I might have written him a ticket at one time or another for maybe driving while suspended when I worked in uniform. That sounds familiar. I think that's right but I—other than that.

Q No other contacts with him?

A No, not that I can remember.

Q Was, was he on the Richard property about two hours before you executed the search warrant?

A I have no idea.

Q Did you ever hear anything about that?

A No, and nobody mentioned T.J. to me.

Q Okay, now during your search on the 13th of the Richard property, did Charla ever advise you that about a week and a half prior to your search and just two days before the search that one or two of her exterior doors had been broken?

A Yeah, she made mention of that.

Q Well, what, what'd she say?

A She, she just said that they'd been broken and it just seemed—how'd she put it? It seemed kind of funny.

Q Okay, I don't, I don't recall reading that in your report. Why didn't you put that in your report?

A Because at the time I felt that she was making accusations towards me as planting evidence and that's far from the facts.

Q You just felt that, right?

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A She insinuated it, yes.

Q Okay.

A She had asked me if I'd ever been in her residence other than the wedding also just as you had and if you, I guess, read into that as questions well enough, then you can take the same reference to that and, and that that was fairly obvious coming from her.

Q Did she ever come right out and say, "You, Officer, you were,"—

A No, she never accused me directly but, like I said, she made reference to it and, and kind of inferred that and, and I took, I took offense to it to be quite honest.

Q How did she infer it?

A She asked me if I'd ever been in her residence without her permission before and if that—I think she put it as—how did she say it? "Have you, have you done this in other houses or other places to, to other people?" something to that effect and I said, "What are you talking about?" "Well, been in their house." I said, "With a search warrant, yeah, we do it all the time."

Q How about without a search warrant?

A Well, absolutely not. That would be illegal.

Q Okay, should—

A Unless we're invited, I mean, obviously.

Q —should you have at least made a reference to that maybe even for your own protection?

A I guess at the time I didn't feel it was necessary, no.

Q Okay.

A I mean, I—it will be in this deposition. So I guess I'll protecting myself well

enough.

Q Do you know a person by the name of Dave that was, that was or is an acquaintance of Richards?

A Yeah, only if you're talking about Dave Sheshilski who's the guy we got the marijuana grow operation from is the only one if that's who you're talking about.

Q Okay, tell me about your contact with Dave.

A I assisted Officers Andy Shotts and Les McFarland in a marijuana growing operation. I believe it's on County Road 1100 West but I couldn't give you an address other than that.

Q Les McFarland, is he up there at Marshall County?

A Marshall County, yeah.

Q Okay, go ahead.

A And basically I guess all I did was assist them in, in dismantling the, the evidence after they had obtained the search warrant.

Q Okay, did you have any other type of contacts after that?

A With, with Dave after—what do you mean?

Q With Dave or any type of—

A From that—you mean after that day?

Q Yeah.

A No, no, I don't think I've ever seen or talked to Dave since then.

Q Okay, did you ever make a telephone call to, to Charla and speak to her about Dave?

A Yes.

Q Okay, when did you make that call?

A I believe it might have been the same day that he was arrested.

Q When, when was that? Do you recall?

A I don't, I don't know what the date was.

Q Well, why'd you place a call to Charla about Dave?

A Because he, he supposedly fed her cows or what he said. He fed the cows and he said it was important that the cows get fed. So I made a phone call to her to—he didn't really want to go to jail obviously. I made a phone call to her to tell her that, that her farm, that the farmhand—I, I didn't think she had a lot to do with the farm. I figured she'd get a hold of Carl and let him know that the farmhand that fed the cows wouldn't be able to make it to feed the cows that day.

Q So you were worried about the cows?

A Well, Dave was worried about the cows and Dave was cooperating so—

Q Were you ever trying to maybe connect them, the Richards, and Dave in, with a crime?

A Oh, did we ever?

Q Were you trying to?

A Oh, I would have loved to have done that. I would have, yeah, but—

Q I'm not asking you would you have but were you trying to?

A If, if that opportunity arose from that phone conversation, yes, I would have taken advantage of it.

Q Okay, but what I was asking you is were you intending to at the time?

A My intention at the time was to see how they reacted to Dave's arrest, I guess. So if that connected them, then, yes, that would have been my intention.

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Q Okay, did anything come of that phone call that was anything significant to a crime?

A Significant to a crime? No, I believe–

Q Did Charla say anything?

A –Charla bonded him out of jail but I believe that was about it.

Q Okay, have–you may have made a reference to this but I just want a clarification. Have you or any other officers from any department ever investigated the Richards for any other thing? I think you may have said marijuana.

A I haven't. That was actually before I even came here, I believe, is when, is–it was either before or–

MR. BROWN: That's a pretty broad question. I mean–

MR. BARRETT: I don't think it's broad. I'm just asking him have you ever investigated them for anything?

MR. BROWN: How much broader can you get? So you're going to–

MR. BARRETT: I mean, have you–did you take steps to, you know, scope out their residence, that sort of thing?

MR. BROWN: Ever?

MR. BARRETT: Ever.

MR. BROWN: Are you asking ever?

MR. BARRETT: Ever.

MR. BROWN: Geez. I'm going to ask, tell him not to answer that if it, if it's investigations that are–

MR. BARRETT: You don't have to reveal the actual investigations but just tell me have you ever investigated them for anything else?

MR. BROWN: Okay, now are we down to him personally?

MR. BARRETT: Yes.

MR. BROWN: I would direct you not to answer if it is anything that is, is or could be ongoing. If it's something that's in the past--

MR. BARRETT: Okay.

MR. BROWN: --that's concluded, I don't have a problem with that.

CONTINUATION OF DIRECT EXAMINATION BY MATTHEW D. BARRETT:

Q Okay, originally I said it was him but just for the sake here of argument, you can tell me about--tell me about anything that has concluded or closed. Have you ever--you personally, have you ever investigated them for anything? That's not, nothing that's ongoing right now.

A I, I--at this point I guess I'd have to say the only thing that I can recall would be the, the marijuana eradication that we have done that, you know, that we always try to connect with--no matter what property it's on--where it came from and who's, who's cultivating or putting it there, but I can't say that there's anything that, like I said, had led us to them. Otherwise, they would have been arrested by me at another time.

Q Okay, would you like to add anything else to your testimony today?

A No.

Q Would you like to change anything?

A Not that I can, I'm aware of, no.

Q Did you understand everything I was telling you?

A I think so.

Q You're laughing. Is there anything you would--

A Well, no, no, I just--like you said, there's a lot of back and forth and I, I

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think I understand and, and I think I answered your questions to the best of my ability.

Q Okay, were you being truthful in all your responses?

A Yes.

MR. BARRETT: Okay, I don't have anything else unless you do.

MR. BROWN: I don't.

THE REPORTER: Signature?

MR. BROWN: Do you want to read it?

THE DEPONENT: Oh, sure, I'd like to look at it.

THE REPORTER: Okay.

AND FURTHER THE DEPONENT SAITH NOT. 3:50 p.m.

M Campbell

Corporal Matt A. Campbell

_____[No changes] X [Changes per attached errata sheet]

12-24-03 [Date signed]

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6319

STATE OF INDIANA)
) SS:
COUNTY OF FULTON)

IN THE FULTON SUPEIOR COURT

CAUSE NO. 25C01- -MC-

AFFIDAVIT FOR SEARCH WARRANT

Matt Campbell, being first duty sworn, upon his oath says the following:

1. That he is a law enforcement officer with Rochester City Police.

2. That he believes and has good cause to believe that certain things, namely marijuana and items of contraband are concealed in or upon the following described property in Fulton County, Indiana:

   2183 W 500 N
   Rochester, IN 46975

   Including House and Barns and Outbuildings

3. Said items constitute evidence of the commission of the offense of Possession of Marijuana and Possession of Paraphernalia.

4. Affiant believes there is probable cause to search based upon the following facts:

   Patty Keim (Riddle School Counselor) contacted me on today's date. She stated that she was approached by a student by the name of Callie R. Richard and told her she had been in one her barns on Friday, October 10 after school. While in the barn she observed what she believed was marijuana. I advised Patty I would come to the school to speak with the student.

   At approximately 1:00PM I went to Riddle Elementary School to speak with Callie, Mrs. Keim, and Mrs. Johnson (School Principal). During the interview Callie again stated she had been in the barn on Friday and found what she believed was marijuana. She stated she knows what it is because she has been around it before. Callie stated she was in the barn just to the east of her house with a U-shaped drive. She houses rabbits in this barn. She stated near her rabbit cages there are blue tarps and

DEFENDANT EXHIBIT "A"

under the tarps is located several plants drying. She also stated there is a blue tub that contains camouflage bags with the same type of plant material. Callie then stated that in the barn near this same barn was an upper area she gained access to by climbing a ladder. In this area she located more of the same type of plants drying.

I asked Callie if they had any marijuana in the house. She stated they always had marijuana in the drawer near the stove. She stated they kept it in a white case. She then spoke of a hidden room in the basement area near the furnace room. She stated this room had bi-fold doors and then remove items from in front of the panel and then go into the dim room. She stated she had been in the room before when there were plants growing. She is not aware if there are any plants in there at this time.

Wherefore affiant requests the Court to issue a search warrant directing the search for and seizure of the above-described property.

M Campbell

Affiant

I hereby affirm under penalties of perjury that the foregoing affidavit is true.

M Campbell

Affiant

State of Indiana)
) SS:
County of Fulton)

In The Fulton Superior Court

Cause No 25D01- -MC-

SEARCH WARRANT

To: Any Indiana Law Enforcement Officer

WHEREAS an affidavit has been filed with me that establishes probable cause, you are therefore authorized and ordered, in the name of the State of Indiana, with any necessary and proper assistance, to enter into or upon the following described property, to-wit:

2183 W 500 N Rochester, Fulton County, Indiana including the house, barns and all outbuildings.

and to there diligently search for the following described property:

Marijuana, paraphernalia and other illegal drug contraband.

You are further ordered to seize such property, or any part thereof, found on such search.

Dated this 13th day of October, 2003, at 1:58 P.M.

Judge, Fulton Superior Court

RETURN ON WARRANT

I, the undersigned, executed the foregoing search warrant on the 13 day of Oct, 2003, at 2:35 o'clock P .M. and seized the following items:

Misc. Marijuana From Kitchen drawer - $126.00 Cash - 3 credit Cards - 1 Checkbook 2 smoking devices 1 gold business card Holder w/ 3 handrolled cigs. 1 set of scales 1 Black Gym Bag w/ misc. meth items and papers - stems Marijuana from Brns - 3 Duffle (Camo) Bags - 2 Black Plastic Rolled - 2 white Barrells - 2 Plastic Bags w/ green leaf + scales Pipe Rolling Paper Broken Pipe

Law Enforcement Officer

DEFENDANT'S EXHIBIT "B" 12-5-07

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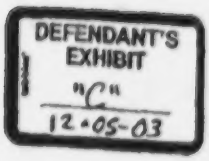

INCIDENT # 203649
CASE # 10-03-439
POSS OF MARIJUANA, C-FELONY/
BATTERY ON A LAW ENFORCEMENT OFFICER, D-FELONY
INTIMIDATION, D-FELONY
RESISTING LAW ENFORCEMENT, D-FELONY
AIDING, INDUCING, AND CAUSING ESCAPE, C-FELONY
POSSESSION OF SCHEDULE II W INTENT TO DEAL
ESCAPE

OFFENSE # 10-03-440 (CARL)
OFFENSE # 10-03-441 (CHARLA)

On October 13, 2003 at approximately 1:58 P.M. I obtained a search warrant for the property of 2183 W 500 N, Rochester, In. in Fulton County, including the house, barns, and all outbuildings. The warrant allowed any law enforcement officer to search for marijuana, paraphernalia, and other illegal drug contraband.

At approximately 2:35 P.M., Sheriff Roy Calvert, Sgt. Ed Beaird, Deputy Kerry Brouyette, State Trooper Randy Shaver, Fulton Deputy Marshal Jim Reason, Detective Reichard, and I arrived at the residence.

Sheriff Calvert and I approached the door of the residence. As we approached the door, Sgt. Beaird stated he had made contact with someone on the west side of the residence. Sheriff Calvert and I approached the female subject that I know as Charla Richard. I advised her we had a search warrant for her residence and barns. I supplied the search warrant to her and asked her to step inside to conduct our business. Charla asked to make a copy of the search warrant at which time I allowed her to photocopy the document. She stated her children were asleep and asked if she could take them to another place so that they would not wake up during the search process. I told Charla she was free to leave the residence with the children or she could let them sleep and we would not disturb them. She chose to let them sleep. She roamed throughout the residence with either Sheriff Calvert or I accompanying her. She requested to change her clothes. I told her she could change after we had secured the bathroom for her to change in. She eventually changed into different clothes. I finally asked her to stay in one spot in the residence so we could safely search without attempting to maintain contact with her. She made numerous phone calls while we were conducting the search.

I conducted the search starting in the kitchen area. I systematically worked my way around the cabinets and drawers in the kitchen. When I opened the top drawer to the right of the kitchen sink I observed a white plastic container. I also observed a paper plate and a quantity of green plant material in the drawer. I removed the drawer from the cabinet and placed it on the table. Photographs were taken of the drawer and its contents. I opened the white plastic container and discovered smoking devices and green plant material in the container. I secured the illegal contents of the drawer and placed them in an evidence bag. I continued r[illegible]

search the remainder of the kitchen area only to located a smoking device under the kitchen sink. During the search of the kitchen area I asked Charla if she was aware of anything in the house that shouldn't be there. She stated it depends on what I was looking for. I stated to her I was looking for Marijuana, Cocaine, Crystal Methamphetamine, or any other items related to drug use. She did not respond specifically to that question.

I then searched the area south of the kitchen and the living room area. No other items were found in these areas. I was then summoned into the master bedroom. I photographed the top drawer of a dresser that contained a plastic bag with green plant material in it and photographed the top of another dresser that had smoking devices located on it. Sgt. Beaird and State Trooper Randy Shaver finished searching the other bedrooms upstairs and requested me to assist the officer in the outbuildings. At this point I advised Sheriff Calvert that Charla was under arrest and should be considered in custody. I advised her of her Miranda Rights at approximately 3:00 P.M. She immediately requested to speak with her attorney.

I then went outside to assist the officers. Upon entering the north side of the barn directly east of the garage I located a wooden box near some rabbit cages. I opened the box and discovered some large camouflage bags. I opened the bags and discovered a green plant material in the bags. I advised the other officers of the discovery and asked that they photograph and secure the evidence in Detective Reichard's van. I then went into the barn nearest the road. Inside the barn was located numerous bales of hay and no items of contraband that I could find. I then went into the smaller building located inside the actual cow lot. I went into the northwest corner door. I then climbed up into the loft area where I located another camouflage bag, which contained a large amount of green plant material. Also located in the loft were several stalks that had been stripped of the leaves and bundled together with twine and a large plastic bag containing green plant material. There was a plastic sheeting covering the floor of the loft and chairs located toward the middle of the loft. There was string running perpendicular with the rafters. There was a large amount of green plaint material wrapped up in plastic also located near the west end of the loft. Near the chairs were scissors and twine. I again notified the officers outside and requested them to photograph and collect the evidence and place it in to Detective Reichard's van. I then went back into the residence and continued to search. I went downstairs and started to search the rooms in the basement. I started in the room near the stairs and continued into the bathroom. I exited the bathroom and went to the closet under the stairs. I then entered the utility room that housed the furnace. I opened a set of bi-fold doors and went through items in the closet. Upon searching these items, I located a wooden panel on the left end of the closet. It held three shelves that contained a few items. I removed the items and then pulled on the shelf brackets. This revealed a gray steel door. I opened the door and entered a dark room. This room contained some five-gallon buc[redacted]

that had dirt in them. I then located on the floor some green plant material. I noticed this room had some type of vent pipes, running water (tap), and electricity supplied to the room. The room had concrete walls and only the wooden floor above. I photographed this room and the contents. I collected the green plant material from this room and placed it into an evidence bag.

Trooper Randy Shaver was searching the bedroom on the west end of the basement when he summoned me to come to his location. Upon entering the room I noticed, as did Trooper Shaver, numerous Jim Morrison posters, pictures, and even a picture of his tombstone in the room. Numerous computer parts were laying about the room. Trooper Shaver located a black gym bag in the closet of this room. Upon opening the gym bag he located numerous smaller containers that contained several items related to the consumption of crystal methamphetamine. Inside the bag was a smaller bad that contained a small plastic baggy that had a white powder substance inside. Also located in the bag were letters addressed to "CHAR", 2183 W 500 N, Rochester, In. 46975. I photographed some of the items and placed them back into the gym bag and secured the entire bag for evidence.

At this time, Sheriff Calvert advised me that Carl had arrived home. I went outside to speak with Carl, who was holding his one year old daughter. I asked Carl if I could speak with him. He asked "What about?" I stated to him that I wanted to talk to him about the marijuana located in the barn. He stated he had not been in the barn in a while. I then advised Carl he was being arrested and advised him of his rights at approximately 3:45 P.M. I asked Carl what kind of arrangements he wanted to make for the care of his children. He wanted me to ask Charla.

Arrangements were made for the children to be picked up by Tracy Pocock (Charla's sister-in-law and Rita Jenkins (Richard), Carl's sister). I advised Carl we had located what we believed was crystal methamphetamine in some of Charla's possessions. Carl began to speak about the people Charla had been having over while he was working and that he has nothing to do with crystal methamphetamine. Carl even stated at one point someone staying in the house had made coffee for him and he believed she had put something in it because he was tripping for two days. He stated he drank three gallons of beer a day to try to come down and that he did not sleep for that period of time. He then stated he made that person leave his residence by threat of force. Carl spoke of the "freaks" that would be there when he came home from work. Carl was obviously not happy about the discovery of crystal methamphetamine in his home. Carl stated Charla had told him that she quit using it. Carl asked when I could test the substance to verify it was crystal methamphetamine. I told him I would conduct a field test to find out. I told him if it did test for crystal methamphetamine. he would not be charged for it.

Sheriff Calvert then transported Carl to the Fulton County Sheriff's Department.

Being certified in Narcotic Identification Class by ODV, Inc. I conducted a field test on the white substance located in [illegible] black gym back at approximately 4:00 P.M. The indication from [illegible]

field test was positive for methamphetamine. With the amount of small plastic-bag located in the gym bag I initially called the jail and advised them to charge Charla with the B-Felony, Dealing Schedule II Controlled Substance under the possession with the intent to deliver.

We left the residence at approximately 5:00 P.M.

I spoke to Detective Reichard about the evidence he had in his van and requested him to meet me at the Rochester Police Department evidence bay to transfer the evidence to there under my care. On my way to the evidence bay I radioed to Fulton County Sheriff's Department requesting to know if I needed to come to the jail to fill out the remand sheets. Fulton County radioed back stating things were taken care of on that matter. Detective Reichard and I met at the bay at the same time and unloaded the items together. I maintained custody of the items and Deputy Marshal Jim Reason assisted me in logging and tagging the items of evidence. The items were secured in the bay.

Upon logging and tagging the items, I decided to call the jail to change the B-Felony charge to the D- Felony and let the Prosecutor decide on the B-Felony charge. At the time I called the jail to change the charge, Al Graham, the jailer o duty, stated Carl had bonded out already and that I had caught him just in time for Charla. Al also stated Carl had bonded out on the B-Felony charge at the $40,000.00 bond. I asked him why he had done that. Al stated that is what he was advised to charge him with. I advised Al that was a mistake and that Carl was not to be charged with that. Al stated it was already done and that Carl would be able to get his money back from court.

On October 14, 2003, I spoke with Erica Baughman about the children living in the residence at the time of the incident. I told her I had spoken to the Prosecutor about the removal of the children due to the manufacturing of illegal drugs on the property. Erica stated she would speak with the staff attorney and let me know. I went to Erica's office to speak with her about the procedure. She stated she needed to fill out the paperwork and have it signed by a judge in order to detain the children. She stated she would do the paperwork and that we would have to go to Kosciusko County Courthouse to locate Judge Morton to sign the forms. Erica called when she completed the paperwork and we drove to Warsaw to find Judge Morton.

Judge Morton examined the paperwork and signed the documents to detain the children from Carl and Charla.

We returned to Fulton County and started to make arrangement for the children to stay with family members. We met with Tracy Pocock in the office of CPS and then went to the home of Carol Pocock (the maternal grandmother to Charly Rae and Quentin Nichols). Carol stated that Quentin's father (Wayne Nichols) had come to get Quentin. We discussed with Tracy and Carol the temporary placement of Charly Rae with them. Once we had come to a conclusion we left the residence.

Erica and I then needed to delivered the notice of detention to Carl and Charla. We drove to 2183 W. 500 N.

On October 14, 2003 Erica Baughman and I went to 2183 W. 500 N. (Carl and Charla Richard's residence) to deliver a notice of detention for the children living in the residence. Upon our arrival, I advised Erica to wait in the car while I approached the male subject located in a pickup truck in the driveway. The male subject stated his name was Kevin and that he was looking for Carl also. As we approached the door, I motioned for Erica to stay in the car. No one answered the door so we started to walk away. I decided to knock again. Charla answered the door and asked what we wanted now. I asked her if we could step inside out of the nasty weather. She complied and let us come in. While inside we advised her of the detention notice. She started to become belligerent. I then advised her that I had a warrant of her arrest for arson and that she was under arrest on that warrant. I told her she would have to come to the jail with me. She then became more belligerent. At this time, Carl came in the door carrying Carly Rae Richard (the couple's 1 year old daughter) whom we had already served the detention notice for.

Carl became verbally abusive to me and began to yell. Charla advised him that she was under arrest for the warrant and that we were taking the children from them. He became physically abusive at this point and grabbed me by the coat and pushed me numerous times into the closed door. When he was pushing me into the door it caused pain in my back and the back of my head. Carl raised his fist numerous times as though he was going to hit me. At one point he hit me with his closed fist in the chest causing pain in that area for a period of time after the incident. Numerous times he grabbed my coat and pushed me against the door it caused pain to my head and back. During this incident I was in fear of him causing serious bodily injury to myself and/or Erica Baughman. I attempted to speak with Carl rationally about the situation in an effort to diffuse his anger and give Erica and I an opportunity to exit the situation safely. He began yelling at us to leave his house. I again advised him that Charla was under arrest for the warrant. He grabbed me by the coat and pushed me toward the door. I was pushed out the door and Carl stated to me to get "That fat hog" (Erica) out of his house. He then followed me out to the driveway and pushed me in the back again.

During the entire physical incident inside the residence and outside I was in fear for my safety and the safety of Erica Baughman.

Upon reaching my squad car I radioed for assistance as Carl and Charla had entered the house with Carly Rae. I then observed Deputy Kerry Brouyette arrive at the scene. At this point I noticed Carl, Charla and Carly Rae get into a truck parked at the West side of the residence. They started the truck and started to drive away. I went to the truck and ordered Carl to stop the truck at gunpoint. There was a short period of time where Carl did not move the vehicle nor did he comply with my commands. He eventually exited the vehicle. I verbally commanded him to get on the ground numerous times. He refused every command I gave him. He walked around the rear of the truck toward the house. Deputy Walker

Conley stopped him. I advised Deputy Conley, Carl was being arrested for battery. I heard Deputy Conley adyise Carl he was being arrested for battery.

Deputy Conley handcuffed Carl and Deputy Brouyette took custody of Charla. Carly Rae was placed into my squad car. Carl and Charla were transported to FCSD.

I transported Erica and Carly Rae to a family member's residence. While at the residence I spoke with Sheriff Roy Calvert. He requested to know if I was "O.K." I advised him that I was actually sick to my stomach and that I had pain in my chest and ribs. We talked briefly and decided to meet at FCSD.

While at the jail I completed a probable cause order for Carl Richard and presented it to the Superior Court Judge Wayne Steele. Judge Steele reviewed the order and signed Carl's detention without bond until appearance before the judge.

On October 15, 2003 I was still feeling some discomfort in the chest area in which I was struck

Corporal Matt Campbell
Rochester Police Departmen

ERRATA SHEET FOR THE DEPOSITION OF CORPORAL MATT A. CAMPBELL

RE: State of Indiana vs. Carl Richard
Fulton Circuit Court
Cause #25C01-0310-FC-00073

Deposition Date – December 5, 2003
Place – Rochester, IN

After having read my deposition, I wish to make the following changes:

PAGE 58 LINE 18

CHANGE: Agent K UMP

TO: H + K UMP

REASON FOR CHANGE: Improper product name.

PAGE 58 LINE 25

CHANGE: Carie Brouyette

TO: Kerry Brouyette

REASON FOR CHANGE: Improper spelling of name

PAGE 59 LINE 6

CHANGE: Carie

TO: Kerry

REASON FOR CHANGE: Same

PAGE 60 LINE 9 + 21

CHANGE: Carie

TO: Kerry

REASON FOR CHANGE: Same

I am, therefore, signing my deposition conditioned on the fact that the above-noted shall be attached to my deposition by the Court Reporter.

M Campbell

Gail Malm Armstrong
Court Reporter
2305 S. County Road 550 W
Logansport, IN 46947
Voice – 574 652 2200
Fax – 574 652 2299

STATE OF INDIANA

SS:

COUNTY OF FULTON

I, Gail Malm Armstrong, Notary Public for the State of Indiana, do hereby certify that **Corporal Matt A. Campbell**, the witness herein, was by me duly sworn to tell the truth, the whole truth and nothing but the truth in a cause in which State of Indiana is the Plaintiff and Carl Richard is the Defendant, now pending in the Circuit Court of Fulton County, Indiana.

That the foregoing deposition upon oral examination was taken at the instance of the Defendant in the offices of Richard A. Brown, Prosecuting Attorney for Fulton County, Fulton County Courthouse, 815 Main Street, Rochester, Indiana, 46975, on **Friday, December 5, 2003,** pursuant to the Indiana Rules of Trial Procedure with written notice as to time, place and date.

That said deposition was taken down by means of two electronic recording systems running simultaneously and by means of my shorthand notes and afterwards reduced to printed page by me and thereafter presented to the witness for signature.

I do further certify that I am a disinterested person in this cause of action, that I am not a relative or attorney for any of the parties or otherwise interested in the event o this action and am not in the employ of the attorneys for the respective parties.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial sea this 11th day of December, 2003.

Gail Malm Armstrong, Notary Public #488899
Residing in Cass County, Indiana
My commission expires: 12/31/2008
American Association of Electronic
Reporters & Transcribers Cert #00232

000101

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

STATE OF INDIANA	)	IN THE FULTON CIRCUIT COURT
	) SS:	
COUNTY OF FULTON	)	SITTING AT ROCHESTER, INDIANA
STATE OF INDIANA, Plaintiff,	)	
vs.	)	CAUSE NOS.: 25C01-0310FC-73 25C01-0310FC-74
CARL RICHARD and CHARLA RICHARD, Defendants.	)	

DEFENDANTS' MOTION TO SUPPRESS EVIDENCE

Comes now the Defendants, CARL RICHARD and CHARLA RICHARD, by counsel, Allen Law Offices, by Attorneys Matthew D. Barrett and Dale Allen, and respectfully request that this Honorable Court suppress all evidence, written and verbal statements and confessions; derivative evidence, both tangible and intangible, that was the product of the primary evidence, or that was otherwise acquired as an indirect result; and the fruits thereof, relating in any way to the illegal October 13, 2003 search of the Defendants' residence and property located at or about 2183 W. 500 N., Rochester, Fulton County, Indiana. In support thereof, Defendants state as follows:

1. On or about October 13, 2003, at approximately 1:00 p.m., Cpl. Matt Campbell of the Rochester Police Department interrogated Defendant Carl Richard's 8 year-old daughter, Callie Richard, at Riddle Elementary School without parental consent, in violation of I.C. § 31-32-5-1.

2. Shortly after said interrogation, Cpl. Campbell took the information that he obtained from Callie Richard and drafted an Affidavit for Search Warrant.

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3. Cpl. Campbell presented the Affidavit for Search Warrant to the Fulton Superior Court and the Court issued a Search Warrant dated October 13, 2003, at 1:58 p.m., directing any Indiana law enforcement officer to search the Defendants' residence and property located at or about 2183 W. 500 N., Rochester, Fulton County, Indiana.

4. Cpl. Campbell's Affidavit for Search Warrant did not meet the statutory requirements of I.C. § 35-33-5-2 and the well-settled holdings of Indiana and federal case law. The October 13, 2003 search and seizure violated Defendants' Indiana and federal constitutional rights.

5. Defendants' Motion to Suppress Evidence is supported by the attached Memorandum of Law and the following exhibits, which are attached hereto and incorporated herewith:

(a) Deposition of Cpl. Matt Campbell, dated December 5, 2003, marked as **Defendants' Exhibit "A"**;

(b) Affidavit for Search Warrant, dated October 13, 2003, marked as **Defendants' Exhibit "B"**;

(c) Notice of Detention of Child, marked as **Defendants' Exhibit "C"**;

(d) Riddle Elementary School Response to Non-Party Production of Documents, dated November 24, 2003, marked as **Defendants' Exhibit "D"**; and

(e) Search Warrant, dated October 13, 2003, marked as **Defendants' Exhibit "E."**

WHEREFORE, Defendants, CARL RICHARD and CHARLA RICHARD, by counsel, request that this Court suppress all evidence, written and verbal statements and confessions; derivative evidence, both tangible and intangible, that was the product of the primary evidence, or that was otherwise acquired as an indirect result; and the fruits thereof, relating in any way to

the illegal October 13, 2003 search of the Defendants' residence and property located at or about 2183 W. 500 N., Rochester, Indiana.

Respectfully submitted,

ALLEN LAW OFFICES

BY:

Matthew D. Barrett #23884-64
Dale Allen #10485-64
Attorneys for Defendants
701 E. Lincolnway
Valparaiso, Indiana 46383

Telephone: (219) 462-3998
Facsimile: (219) 531-0683

CERTIFICATE OF SERVICE

We certify that on the 22nd day of December, 2003, service of a true and complete copy of the above and foregoing pleading or paper was made upon each party or their attorney of record herein by depositing same in the United States Mail in envelopes properly addressed to each of them and with sufficient first-class postage affixed.

Matthew D. Barrett #23984-64
Dale Allen #10485-64
Attorneys for Defendants

Distribution:
Richard Brown
Fulton County Prosecutor
815 Main Street, Room 301
P.O. Box 237
Rochester, Indiana 46975

000105

STATE OF INDIANA	)	IN THE FULTON CIRCUIT COURT
	) SS:	
COUNTY OF FULTON	)	SITTING AT ROCHESTER, INDIANA

STATE OF INDIANA, Plaintiff,	)		
	)		
vs.	)	CAUSE NOS.:	25C01-0310FC-73
	)		25C01-0310FC-74
CARL RICHARD and CHARLA RICHARD, Defendants.	)		

DEFENDANTS' MEMORADNUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO SUPPRESS EVIDENCE

Comes now the Defendants, CARL RICHARD and CHARLA RICHARD (collectively referred to as the "Defendants"), by counsel, Allen Law Offices, by Attorneys Matthew D. Barrett and Dale Allen, and submit their Memorandum of Law in Support of Defendants' Motion to Suppress Evidence and state as follows:

I. STATEMENT OF THE RELEVANT FACTS

On October 13, 2003, Cpl. Matt Campbell of the Rochester Police Department was contacted by Riddle Elementary School counselor Patty Keim. [Cpl. Campbell's Dep. at 21, ln. 4.] [Aff. for Search W. at 1, para. 4.] Ms. Keim advised Cpl. Campbell that "she was approached by a student by the name of Callie R. Richard and told her she had been in one of her barns on Friday, October 10 after school." [Aff. for Search W. at 1, para. 4.] Ms. Keim further advised that Callie allegedly "observed what she believed was marijuana" in the barn. [Aff. for Search W. at 1, para. 4.] Callie herself did not personally contact Cpl. Campbell and request to speak with him. [Cpl. Campbell's Dep. at 20, ln. 20.] Thereafter, Cpl. Campbell advised Ms. Keim that he would "come to the school to speak to the student." [Aff. for Search W. at 1, para. 4.]

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Cpl. Campbell testified in his deposition that he did not take any investigative steps into this matter prior to his arrival at Riddle Elementary School. [Cpl. Campbell's Dep. at 21, ln. 11.] In fact, Cpl. Campbell did not even know Callie Richard's name before he arrived at the school. [Cpl. Campbell's Dep. at 21, lns. 11-12.] Interviewing Callie Richard was Cpl. Campbell's first step with regard to this investigation. [Cpl. Campbell's Dep. at 21, ln. 18.]

Shortly after Cpl. Campbell spoke with Ms. Keim, at approximately 1:00 p.m., he arrived at Riddle Elementary School. [Cpl. Campbell's Dep. at 21, lns. 21; 25.; [Aff. for Search W. at 1, para. 4.] Cpl. Campbell questioned Callie Richard in Ms. Keim's office. [Cpl. Campbell's Dep. at 22, lns. 3-4.] Principal Jami Johnson was also present in Ms. Keim's office during the questioning. [Cpl. Campbell's Dep. at 22, ln. 12.] [Aff. for Search W. at 1, para. 4.] Callie was sitting on a couch near Principal Johnson during the questioning. [Cpl. Campbell's Dep. at 22, lns. 21-25.] In fact, all of the adults in the room were "fairly close" to Callie during the questioning. [Cpl. Campbell's Dep. at 23, ln. 8.] Specifically, Cpl. Campbell was within "arm's reach" of Callie during the entire questioning. [Cpl. Campbell's Dep. at 23, ln. 4.]

Callie Richard was eight (8) years-old and in the third grade at the time Cpl. Campbell questioned her at Riddle Elementary School. [Notice of Detention of Child] [Riddle Elementary School Resp. to Non-Party Prod. at 5.] Cpl. Campbell described Callie's physical appearance as being approximately a little under four foot in height and that she weighed eighty pounds. [Cpl. Campbell's Dep. at 25, lns. 22-24.] Furthermore, Cpl. Campbell described Callie's body frame as being "pretty slender" [Cpl. Campbell's Dep. at 26, ln. 2.]

At the time Cpl. Campbell interviewed Callie, he knew that there was an ongoing "paternity suit" between Carl Richard and his ex-wife, Carmen Richard. [Cpl. Campbell's Dep. at 36, lns. 19-21.] Cpl. Campbell agreed in his deposition that it was entirely possible that

Carmen Richard, or someone else, could have told Callie to make these allegations against her father, Defendant Carl Richard, in order to spite him. [Cpl. Campbell's Dep. at 36, ln. 16.] [Cpl. Campbell's Dep. at 37, ln. 7.]

Cpl. Campbell never bothered to advise Callie of any Miranda warnings at any time before, during or after the interview at the school. [Cpl. Campbell's Dep. at 37, ln. 10.] Cpl. Campbell admitted that he did not obtain permission from Callie's parents before he questioned her at the school. [Cpl. Campbell's Dep. at 38, ln. 3.] Cpl. Campbell stated that he was not required to obtain permission from Callie's parents since the questioning occurred "at [the] school." [Cpl. Campbell's Dep. at 38, lns. 8-9; 12-13.] In fact, Cpl. Campbell stated that it was the responsibility of Principal Johnson or Counselor Keim to obtain permission from Callie's parents. [Cpl. Campbell's Dep. at 38, lns. 8-9.] Cpl. Campbell admitted that he is not familiar with the statute commonly known as Indiana's Juvenile Waiver of Right's Statute. [Cpl. Campbell's Dep. at 38, lns. 20-22.]

During the interview, Callie allegedly told Cpl. Campbell that she had been in her barn on Friday and "found what she believed was marijuana." [Aff. for Search W. at 1, para. 4.] Callie allegedly told Cpl. Campbell that "she knows what it is because she had been around it before." [Aff. for Search W. at 1, para. 4.] Callie also allegedly told Cpl. Campbell that there were also "plants drying" under some tarps and a blue tub that contained camouflage bags with some "plant material." [Aff. for Search W. at 1-2, para. 4.]

However, Cpl. Campbell agreed in his deposition that it is possible that the substance in the barn that Callie allegedly referred to as "marijuana" could have been hay, straw, corn stalks or some other form of plant material. [Cpl. Campbell's Dep. at 33, ln. 3.] In fact, Cpl. Campbell

readily admitted in his deposition that he is "not a farmer" and does not "know a lot about the difference[s]" between hay and straw. [Cpl. Campbell's Dep. at 32, lns. 20-21.]

Furthermore, Callie allegedly told Cpl. Campbell that there was "marijuana in the drawer near the stove" in her home. [Aff. for Search W. at 1, para. 4.] Callie also allegedly advised Cpl. Campbell that at one time there had been "plants growing" in the basement of her home; however, as of the date of the interview, she was "not [currently] aware of any plants in there." [Aff. for Search W. at 1, para. 4.] Ms. Keim never told Cpl. Campbell as to why Callie allegedly contacted her regarding these matters. [Cpl. Campbell's Dep. at 28, lns. 11-14.] Cpl. Campbell admitted that it is possible that Callie could have been mistaken with regard to the identification of the substance alleged to be marijuana. [Cpl. Campbell's Dep. at 29, ln. 10.] In fact, based on his own professional experience, Cpl. Campbell agreed that young children of eight to nine years of age or younger often have a tendency to fabricate things and tell imaginative stories. [Campbell Dep. at 17, lns. 15; 17.]

Cpl. Campbell believed that Callie was qualified to identify the substance alleged to be marijuana based on "numerous rumors" that he heard concerning the Richards' farm. [Cpl. Campbell's Dep. at 30, lns. 22-25.] These "rumors" concerned marijuana found growing on the Richards' farm during annual marijuana eradication activities by law enforcement; however, none of the marijuana found has ever been "connected" to the Richards. [Cpl. Campbell's Dep. at 31, lns. 20.] Furthermore, Cpl. Campbell believed that Callie was qualified to make such a determination based on a prior and unrelated arrest involving the Richards that occurred "years ago." [Cpl. Campbell's Dep. at 31, lns. 6-25.] The arrest occurred "before Callie was born." [Cpl. Campbell's Dep. at 31, ln. 7.]

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Prior to October 13, 2003, the date that Cpl. Campbell questioned Callie at the school, Cpl. Campbell had been previously present on the Richard property as a guest for the wedding of Carl and Charla Richard. [Cpl. Campbell's Dep. at 63, ln. 7.] The wedding took place in the basement of the Richards' residence approximately one year prior to the October 13, 2003 search. [Cpl. Campbell's Dep. at 65, lns. 18; 20.] [Cpl. Campbell's Dep. at 65, ln. 4.] In fact, Cpl. Campbell's wife, Rebecca, and Charla Richard are "best friends." [Cpl. Campbell's Dep. at 63, ln. 9.] While at the wedding, Carl Richard showed Cpl. Campbell around the Richards' residence. [Cpl. Campbell's Dep. at 65, ln. 11.] Also, it is worthy to note that Cpl. Campbell testified that he believes Carl Richard "can be a good father," that Carl "loves his children," and that Carl "cares for his children." [Cpl. Campbell's Dep. at 67, lns. 9-10; 14.]

Cpl. Campbell questioned Callie at the school for approximately fifteen (15) to twenty (20) minutes. [Cpl. Campbell's Dep. at 34, ln. 16.] Immediately after Cpl. Campbell questioned Callie, he left the school and he prepared the Affidavit of Search Warrant. [Cpl. Campbell's Dep. at 35, ln. 16.] Cpl. Campbell utilized the information that Callie allegedly gave him during the questioning as the sole basis for applying for the Search Warrant. [Cpl. Campbell's Dep. at 35, ln. 20.] Cpl. Campbell did not take any further investigative steps concerning the information Callie provided him for the reason that he "felt that he had enough probable cause to go ahead and file for the search warrant." [Cpl. Campbell's Dep. at 35, ln. 25.] Notwithstanding the present case, Cpl. Campbell admitted that he takes additional investigative steps to corroborate information provided to him by informants "if it's possible." [Campbell Dep. at 15, ln. 5.] Cpl. Campbell also agreed in his deposition that establishing the credibility of a witness is important. [Cpl. Campbell's Dep. at 15, ln. 7.]

The Search Warrant was issued on the same day as Callie's interview at approximately 1:58 p.m. [Search W., at 1.] [Cpl. Campbell's Dep. at 35, lns. 8; 13.] Cpl. Campbell did not have any further contact with Callie after he left the school and before he served the Search Warrant. [Cpl. Campbell's Dep. at 34, ln. 19.] Thereafter, Cpl. Campbell and other law enforcement officers from various agencies searched the Richards' property.

II. APPLICABLE CONSTITUTIONAL PROVISIONS

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized. U.S. CONST. amend. IV.
>
> No person ... shall be compelled in any criminal case to be a witness against himself .... U.S. CONST. amend. V.
>
> Nor shall any State deprive any person of life, liberty, or property without due process of law .... U.S. CONST. amend. XIV.
>
> The right of the people to be secure in their persons, houses, papers and effects against unreasonable search, or seizure, shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized. IND. CONST. art. I, § 11.

III. GROUNDS FOR SUPPRESSION

A. Should the Court Grant Defendants' Motion to Suppress Evidence When Cpl. Matt Campbell Unlawfully Interrogated Eight Year-Old Callie Richard at Riddle Elementary School Without First Permitting Callie to Engage In Meaningful Consultation With Her Parents?

B. Should the Court Grant Defendants' Motion to Suppress Evidence Since Cpl. Matt Campbell's Affidavit for Search Warrant Is Facially Deficient Because It Fails to Establish Probable Cause to Search Since: (1) It Does Not Contain Facts Sufficient Enough to Establish Callie Richards' Credibility; and (2) Cpl. Campbell Failed to Corroborate Any of the Alleged Information Relayed to Him from Callie Richard?

IV. THE EXCLUSIONSARY RULE & STANDARDS OF REVIEW

The exclusionary rule prohibits direct as well as indirect products of illegal searches. Silverthorne Lumber Co. v. United States, 251 U.S. 385 (1920). This rule has come to be known as the "fruit of the poisonous tree" doctrine. Explaining this rule, the U.S. Supreme Court has said, "The exclusionary rule also prohibits the introduction of derivative evidence, both tangible and intangible, that is the product of the primary evidence, or that is otherwise acquired as an indirect result of the unlawful search ...." Nardone v. United States, 308 U.S. 338, 341 (1939). The "fruit of the poisonous tree" doctrine applies to Article I, Section 11 of the Indiana Constitution as well as the Fourth Amendment under federal law. Trowbridge v. State, 717 N.E.2d 138, 144 (Ind. 1999); *see also* Moran v. State, 644 N.E.2d 536, 540 (Ind. 1994) ("This Court first explicitly adopted the exclusionary rule in Calendar v. State [138 N.E. 817 (Ind. 1922)."]).

The defendant bears the initial burden of showing to the court that a prima facie issue exists that evidence was obtained by an unlawful search and seizure. This can be done by affidavit. Nardone v. United States, 308 U.S. 338 (1939). After the defendant has made a prima facie issue that evidence was obtained by unlawful means, the defendant also bears the burden of persuasion in proving a violation occurred where the search and seizure was conducted pursuant to a warrant. United States v. Longmire, 761 F.2d 411 (7th Cir. 1985). A reviewing court is to focus on whether a "substantial basis" existed for a warrant authorizing the search and seizure. Mitchell v. State, 745 N.E.2d 775, 783 (Ind. 2001). In determining whether a "substantial basis" exists, the reviewing court must focus on whether reasonable inferences drawn from the totality of the evidence support the determination. Id.; Figert v. State, 686 N.E.2d 827, 830 (Ind. 1997). A "reviewing court" for these purposes includes both the trial court ruling on a motion to

suppress and an appellate court reviewing that decision. Jacques v. State, 687 N.E.2d 180, 182 (Ind. 1997).

Where the defendant can show by a preponderance of the evidence that the affidavit upon which the warrant was based contained either perjured testimony or a reckless disregard for the truth, and the rest of the affidavit does not contain sufficient information to establish probable cause, the warrant will be invalidated. Further, once the defendant makes a "substantial preliminary showing" that the search warrant affidavit contains perjury or reckless testimony by the affiant, he is entitled to a hearing on whether the information on which the warrant was based is perjury or whether the affiant recklessly disregarded the truth. Franks v. Delaware, 438 U.S. 154 (1978); Utley v. State, 589 N.E.2d 232 (Ind. 1992); Jewell v. State, 672 N.E.2d 417 (Ind. Ct. App. 1996) ("Substantial showing" standard). Suppression remains an appropriate remedy if the magistrate or judge in issuing a warrant was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard for the truth. United States v. Leon, 468 U.S. 897 (1984).

Where statements sought to be introduced have been elicited immediately following unconstitutional questioning, the burden is on the State to establish that those subsequent statements were not the product of the prior interrogation. Harrison v. United States, 392 U.S. 219 (1968).

Finally, it should be noted that the Fourth Amendment and Article I, Section 11 are nearly identical in their wording and Indiana's constitutional framers most likely incorporated Fourth Amendment phraseology to effect the same protection afforded by that provision. *See* Query v. State, 745 N.E.2d 769, 771-72 (Ind. 2001) ("The text of article I, Section 11 of the Indiana Constitution contains nearly identical language [as the Fourth Amendment])."

Nevertheless, the Indiana Supreme Court has held that the two provisions are not identical in how they are analyzed and interpreted. "Separate and apart from the federal Fourth Amendment analysis, Article I, Section 11 of the Indiana Constitution provides an independent prohibition against unreasonable searches and seizures. Moran v. State, 644 N.E.2d 536 (Ind. 1994). Such challenges are analyzed under an independent 'reasonableness' standard. Id." Peterson v. State, 674 N.E.2d 528, 533 (Ind. 1996). Despite the prospective difference in analyses, the Indiana Supreme Court has acknowledged that "a review of federal holdings may inform our state analysis." State v. Gerschoffer, 763 N.E.2d 960 (Ind. 2002).

V. THE APPLICABLE PRINCIPLES OF LAW

A. The Fifth Amendment & Custody

1. The Fifth Amendment

The right against self-incrimination under the Fifth Amendment is made applicable to Indiana through the Fourteenth Amendment. The U.S. Supreme Court opined that "the constitutional foundation underlying the privilege is the respect the government—state or federal—must accord to the dignity and integrity of its citizens." Miranda v. Arizona, 384 U.S. 436, 460 (1966). "Interrogation" includes both express questioning and words or actions on the part of the police that the police should know are reasonably likely to elicit an incriminating response from the suspect. Curry v. State, 643 N.E.2d 963, 976 (Ind. Ct. App. 1994). A violation of another's Fifth Amendment rights may rise to the level of a violation of his own right to a fair trial. U.S. v. Chiavola, 744 F.2d 1271, 1273 (7th Cir. 1984); United States v. DeRoberts, 719 F.2d 892, 896 (7th Cir. 1983).

Incriminating statements which have been obtained in violation of Miranda are inadmissible at trial. Miranda v. Arizona, 383 U.S. at 444. When a confession is suppressed

because it was unlawfully obtained, all evidence which is inextricably bound to the confession will also be suppressed. Hall v. State, 264 N.E.2d 448, 453 (Ind. 1976).

The burden is on the State to show beyond a reasonable doubt that a defendant knowingly, intelligently and voluntarily waived his rights under Miranda. S.A. v. State, 654 N.E.2d 791, 796 (Ind. Ct. App. 1995). In determining whether a statement or waiver was voluntarily given, Indiana courts look to all of the circumstances surrounding its giving to determine whether it was the product of any violence, threats, promises or other improper influence. Bivins v. State, 642 N.E.2d 928, 936 (Ind. 1994). The appropriate standard for evaluating the voluntariness of a waiver of rights is the "totality of the circumstances" test. Id.

Factors in determining "voluntariness" include, but are not limited to the following considerations: (1) whether the defendant was advised of his Miranda rights prior to the request of the search; (2) the defendant's degree of education and intelligence; (3) whether the defendant was advised of his right not to consent; (4) whether the defendant has previous encounters with law enforcement; (5) whether the officer made any express or implied claims of authority to search without consent; (6) whether the officer was engaged in any unlawful action prior to the request; (7) whether the defendant cooperatived previously; and (8) whether the officer was deceptive as to his true identity or purpose of the search. Camp v. State, 751 N.E.2d 299, 304 (Ind. Ct. App. 2001); Lyons v. State, 735 N.E.2d 1179, 1185 (Ind. Ct. App. 1999); Callahan v. State, 719 N.E.2d 430, 435 (Ind. Ct. App. 1999); and State v. Scheibelhut, 673 N.E.2d 821, 824 (Ind. Ct. App. 1996). It should be noted that the display of police weapons can appear coercive and is a factor in determining whether consent was voluntary. United States v. Jones, 641 F.2d 425 (6th Cir. 1981).

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2. Custody

It is axiomatic that Miranda warnings must be given before any custodial interrogation. Loving v. State, 647 N.E.2d 1123, 1125 (Ind. 1995). The Miranda warnings apply only to custodial interrogation because they are meant to overcome the inherently coercive and police dominated atmosphere of custodial interrogation. Oregon v. Mathiason, 429 U.S. 492, 494 (1977); Carter v. State, 634 N.E.2d 830 (Ind. Ct. App. 1994). A person is deemed "in custody" if a reasonable person in the same circumstances would not feel free to leave. Id.; *see also* Dye v. State, 717 N.E.2d 5, 14 (Ind. 1999). For an interrogation to be custodial in nature, one does not necessarily have to be under arrest. Moore v. State, 723 N.E.2d 442, 449 (Ind. Ct. App. 2000). Thompson v. State, 692 N.E.2d 474, 476 (Ind. Ct. App. 1998). The custodial determination involves an examination of all the objective circumstances surrounding the interrogation. Loving v. State, 647 N.E.2d at 1125.[1]

Whether an arrest has taken place is an issue to be determined by objective facts and not the officer's subjective intent. A police officer's unarticulated plan has no bearing on the question whether an individual was "in custody" at a particular time; the only relevant inquiry is how a reasonable person in the suspect's position would have understood his/her situation. Berkemer v. McCarty, 468 U.S. 420, 441 (1984); *see also* Stansbury v. California, 511 U.S. 318, 322 (1980); and Dye v. State, 717 N.E.2d at 14.

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[1] *See also* Moore v. State, 723 N.E.2d 442, 450-51 (Ind. Ct. App. 2000):

> [R]egardless of whether an individual is a juvenile or an adult, at the moment during the investigation ... that an officer knows or should know that the investigation is contemplating a crime or will turn into an investigation that is criminal in nature, the individual must be read his or her Miranda rights immediately. At the point at which the information-gathering process ... becomes for the purpose of obtaining information related to a crime, individuals are then being subjected to a custodial interrogation and have the right to receive their Miranda warnings.

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B. Juvenile Waiver of Rights Statute

The United States Constitution recognizes a fundamental right to family integrity. Pence v. Pence, 667 N.E.2d 798, 800 (Ind. Ct. App. 1996). A fundamental right to family integrity means that our federal constitution, as a matter of substantive due process, protects the private ordering of interpersonal relationships from state intrusion. Matter of Joseph, 416 N.E. 857, 859 (Ind. Ct. App. 1981). The U.S. Supreme Court has recognized that the Fourteenth Amendment "protects the sanctity of family ... because the institution of family is deeply rooted in this Nation's history and tradition." Moore v. City of East Cleveland, 431 U.S. 494, 503 (1977).

Moreover, Indiana courts have long and consistently held that the right to raise one's children is essential, basic, and more precious than property rights, and within the protection of the Fourteenth Amendment to the United States Constitution. EP v. Marion Co. Office of Family & Children, 653 N.E.2d 1026, 1031 (Ind. Ct. App. 1995). The Indiana Supreme Court has stated that the parent-child relationship is "a sacred and precious privilege." Partridge v. Partridge, 272 N.E.2d 448, 450 (Ind. 1971).

Specifically, in Indiana, a minor child in custody cannot be interrogated by a law enforcement officer unless the provisions of I.C. § 31-32-5-1 are satisfied. The statute provides:

> Any rights guaranteed to a child under the Constitution of the United States, the Constitution of the State of Indiana, or any other law may be waived only:
>
> (1) by counsel retained or appointed to represent the child if the child knowingly and voluntarily joins with the waiver;
>
> (2) by the child's custodial parent, guardian, custodian, or guardian ad litem if:
>
> (A) that person knowingly and voluntarily waives the right;
>
> (B) that person has no interest adverse to the child;

(C) meaningful consultation has occurred between that person and the child; and

(D) the child knowingly and voluntarily joins with the waiver; or

(3) by the child, without the presence of a custodial parent, guardian, or guardian ad litem, if:

(A) the child knowingly and voluntarily consents to the waiver; and

(B) the child has been emancipated under I.C. § 31-34-20-6 or I.C. § 31-37-19-27, by virtue of having married, or in accordance with the laws of another state or jurisdiction.

In addition, I.C. § 31-32-5-2 governs a child's waiver of his/her right to "meaningful consultation" with his/her custodial parent, guardian, or guardian ad litem:

The child may waive the child's right to meaningful consultation under section 1(2)(C) of this chapter if:

(1) the child is informed of that right;

(2) the child's waiver is made in the presence of the child's custodial parent, guardian, custodian, guardian ad litem, or attorney; and

(3) the waiver is made knowingly and voluntarily.

Furthermore, I.C. § 31-32-5-4 governs the factors that a court shall consider when determining whether a juvenile waived his/her rights during custodial interrogation:

In determining whether any waiver of rights during custodial interrogation was made knowingly and voluntarily, the juvenile court shall consider all the circumstances of the waiver, including the following:

(1) The child's physical, mental, and emotional maturity.

(2) Whether the child or the child's parent, guardian, custodian, or attorney understood the consequences of the child's statements.

(3) Whether the child and the child's parent, guardian, or custodian had been informed of the delinquent act with which the child was charged or which the child was suspected.

(4) The length of time the child was held in custody before consulting with the child's parent, guardian, or custodian.

(5) Whether there was any coercion, force, or inducement.

(6) Whether the child and the child's parent, guardian, or custodian had been advised of the child's right to remain silent and to the appointment of counsel.

It is well-established that a child has the right to have his/her parents present during custodial interrogation. G.J. v. State, 716 N.E.2d 475, 477 (Ind. Ct. App. 1999).[2] Indiana courts require *strict compliance* with the juvenile waiver statute in order to protect the juvenile's rights (emphasis added). Foster v. State, 633 N.E.2d 337, 347 (Ind. Ct. App. 1994). A juvenile's Miranda rights may be waived, provided that there are no elements of coercion, force or inducement present. Shepard v. State, 404 N.E.2d 1 (Ind. 1980). Indiana's juvenile waiver statute (I.C. § 31-32-5-1, formerly I.C. § 31-6-7-3) permits the waiver of a juvenile's rights by either the juvenile's counsel or his/her parent or guardian. Deckard v. State, 425 N.E.2d 256, 257 (Ind. Ct. App. 1981). It does not authorize a minor to waive his/her own rights. Id. Persons under 18 years of age cannot unilaterally waive his/her constitutional rights. Beldon v. State, 657 N.E.2d 1241 (Ind. Ct. App. 1995). There must be sufficient evidence to establish that the parent and child joined in the waiver. Sills v. State, 463 N.E.2d 228, 231 (Ind. 1984).

The protections of the juvenile waiver statute ensure that juveniles have the opportunity to engage in "meaningful consultation" with their parent or guardian regarding the allegations, circumstances of the case, and ramifications of their responses to police questioning and

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[2] *See also* State of New Jersey v. Presha, 748 A.2d 1108, 1113 (N.J. 1999). In Presha, the New Jersey Supreme Court stated:

> The role of the parent in the context of a juvenile interrogation takes on special significance. In that circumstance, the parent serves as advisor to the juvenile, someone who can offer a measure of support in the unfamiliar setting of the police station. Thus, we have emphasized that "[w]henever possible and especially in the case of young children no child should be interviewed except in the presence of his parents or guardian."

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confessions. Trowbridge v. State, 717 N.E.2d 138, 146 (Ind. 1999). The "meaningful consultation" requirement may be satisfied by actual consultation of a meaningful nature or by the express opportunity for such consultation. Williams v. State, 433 N.E.2d 769, 772 (Ind. 1982).

The State bears the burden that "meaningful consultation" has occurred or that the opportunity of meaningful consultation has been afforded. Hickman v. State, 654 N.E.2d 278, 281 (Ind. Ct. App. 1995). Specifically, the State bears a *heavy burden* of proving that the meaningful consultation requirement for the juvenile waiver of Miranda rights has been met (emphasis added). Foster v. State, 633 N.E.2d 337, 348 (Ind. Ct. App. 1994). The State must show beyond a reasonable doubt that the juvenile's waiver of right to remain silent was made knowingly, intelligently and voluntarily, which determination is made from the totality of the circumstances. Tingle v. State, 632 N.E.2d 345, 352 (Ind. 1994).

C. Probable Cause for Issuance of Search Warrant.

"Probable cause" to issue a search warrant exists where the facts and circumstances would lead a reasonably prudent person to conclude that a search of the premises will uncover evidence of a crime. Esquerdo v. State, 640 N.E.2d 1023, 1029 (Ind. 1994). An affidavit demonstrates probable cause to search if it objectively provides a sufficient basis of fact to permit a reasonably prudent person to believe that a search of the item or premises will uncover evidence of a crime. Utley v. State, 589 N.E.2d 232, 236 (Ind. 1992). The affiant's judgment cannot be substituted for that of a neutral and detached magistrate/judge. Methene v. State, 720 N.E.2d 384, 389 (Ind. Ct. App. 1999).

When the affidavit is the only evidence presented to the warrant-issuing judge/magistrate, the warrant must stand or fall *solely* on the contents of the affidavit (emphasis added) United

States v. Koerth, 312 F.3d 862, 866 (7th Cir. 2002); Overstreet v. State, 783 N.E.2d 1149 (Ind. Ct. App. 2003) (decision to issue a search warrant should be based on the facts stated in the affidavit). Attestations contained in a probable cause affidavit must be based upon facts and not merely conclusions of the affiant or a witness. Guajardo v. State, 496 N.E.2d 1300, 1340 (Ind. 1986). The law is well-settled that an affidavit for a search warrant must apprise the magistrate/judge of the underlying facts and circumstances which tend to show probable cause exists for the search. Flaherty v. State, 443 N.E.2d 340, 342 (Ind. Ct. App. 1982). A mere conclusory statement gives the magistrate virtually no basis at all for making a judgment regarding probable cause. Illinois v. Gates, 462 U.S. 213, 239 (1983). Sufficient information must be presented to the magistrate/judge to allow that official to determine probable cause; his/her action cannot be the mere ratification of the bare conclusions of others. Id. In the administration of justice, it is imperative that judicial officers have complete information when deciding whether there is probable cause to issue a search warrant. State v. Davis, 770 N.E.2d 338, 343 (Ind. Ct. App. 2002); Newby v. State, 701 N.E.2d 593, 603 (Ind. Ct. App. 1998).

It is important to note that the test of probable cause is objective, not subjective. The issue of probable cause is determined by what a reasonable person would have concluded based on the totality of the circumstances, not on the officer's subjective belief. 1 W. LAFAVE, SEARCH & SEIZURE § 3.2(b), at 568 (1987). The mere subjective conclusions of a police officer concerning the existence of probable cause is not binding on a court, which must independently scrutinize the objective facts to determine the existence of probable cause. United States v. Brierly, 381 F.Supp. 447 (M.D. Pa. 1974). Suppression remains appropriate where an officer could not have harbored an *objectively* reasonable belief in the existence of probable cause (emphasis in original). Doss v. State, 649 N.E.2d 1045, 1048 (Ind. Ct. App. 1995)

The United States Supreme Court has held that uncorroborated hearsay[3] from an informant whose credibility is unknown cannot suffice to satisfy the probable cause requirement for the issuance of a search warrant. Illinois v. Gates, 462 U.S. 213, 227 (1983). The hearsay must exhibit some hallmarks of reliability. Id. The federal test for ensuring the reliability of a hearsay statement in a probable cause determination allows the use of hearsay only if the totality of the circumstances corroborates the hearsay. Loyd v. State, 677 N.E.2d 71, 74 (Ind. Ct. App. 1997) (quoting Gates, 462 U.S. at 230-31). The reliability of hearsay can be established in a number of ways, including where: (1) the informant has given correct information in the past; (2) independent police investigation corroborates the informant's statements; (3) some basis for the informant's knowledge is demonstrated; or (4) the informant predicts conduct or activities by the suspect that are not easily predicted. Jaggers v. State, 687 N.E.2d 180, 181 (Ind. 1997) (quoting Gates, 462 U.S. at 238). The court should also consider whether the informant personally appeared and presented an affidavit or testified before the judge/magistrate, thus allowing the judge to evaluate the informant's knowledge, demeanor, and sincerity. United States v. Reddrick, 90 F.3d 1276, 1281 (7th Cir. 1996).

Likewise, in Indiana, I.C. § 35-33-5-2 has codified changes in Fourth Amendment doctrine on the use of informants to establish probable cause. An affidavit setting forth the facts and circumstances known to the affiant is submitted to a judge who determines whether the facts constitute probable cause.. This procedure is outlined as follows:

> (a) Except as provided in section 8 of this chapter, no warrant for search or arrest shall be issued until there is filed with the judge an affidavit:
>
> (1) particularly describing:
>
> (A) the house or place to be searched and the thing to be searched for; or

[3] "Hearsay" is a statement, other than one made by the declarant while testifying at trial or hearing, offered into evidence to prove the truth of the matter asserted. *See* Ind. Evidence Rule 801(c).

(B) particularly describing the person to be arrested;

(2) alleging substantially the offense in relation thereto and that the affiant believes and has good cause to believe that:

(A) the things as are to be searched for are there concealed; or

(B) the person to be arrested committed the offense; and

(3) setting forth the facts then in knowledge of the affiant or information based on hearsay, constituting the probable cause.

(b) When based on hearsay, the affidavit must either:

(1) contain reliable information establishing the credibility of the source and of each of the declarants of the hearsay and establishing that there is a factual basis for the information furnished; or

(2) contain information that establishes that the totality of the circumstances corroborates the hearsay.

When a search warrant is issued in Indiana, both federal constitutional requirements and the express statutory terms of I.C. § 35-33-5-2 must be met. State v. Haines, 774 N.E.2d 984, 990 (Ind. Ct. App. 2002); *see also* Jaggers v. State, 687 N.E.2d 180, 183 (Ind. 1997) ("[W]hen seeking either a search warrant or an arrest warrant, the police must follow the warrant statute, which specifies the minimum information necessary to establish probable cause."); Matter of M.R.D., 482 N.E.2d 306 (Ind. Ct. App. 1985) (where affidavit for search warrant is based almost exclusively on hearsay, there must be strict compliance with the statutory requirements). A reviewing court is to focus on whether a "substantial basis" existed for a warrant authorizing the search and seizure. Houser v. State, 678 N.E.2d 95, 99 (Ind. 1997). A "reviewing court" includes both the trial court on a motion to suppress and the appellate court reviewing the decision. Id.

An informant's reliability may be shown by corroborating facts which provide a substantial basis for crediting the tip. Seltzer v. State, 489 N.E.2d 939, 940 (Ind. 1986). Furthermore, the reliability of an informant is generally established by an officer's averring that the informant has a history of providing him accurate information. Powers v. State,

440 N.E.2d 1096 (Ind. 1982). The reliability of information from an untried informant or an anonymous tipster may be established by showing: (1) A basis of the declarant's knowledge, that is, how the declarant came by his knowledge; and (2) A verification by the officer's own investigation of some of the facts provided. Houser v. State, 678 N.E.2d 95 (Ind. 1997); Bradley v. State, 609 N.E.2d 420 (Ind. 1993). Specifically, the Indiana Supreme Court in Madden v. State made the following observations with regard to the reliability and credibility of an affiant's sources under I.C. § 35-33-5-2 (formerly I.C. § 35-1-6-2):

> Recognizing the dangers inherent in hearsay ... the Legislature incorporated specific requirements into the statute to assure that the hearsay constituting the probable cause was *credible* in the mind of the issuing authority and not merely in the mind of the affiant. These requirements are specific and simple and were designed to assure that the determination of credibility can and will be that of the issuing authority, made independently of the judgment of the affiant. The goal is that warrants be issued only upon probable cause, shown preferably by facts but in any event by information that is believed to be reliable. The determination of probable cause cannot be made without first determining the likelihood of the correctness of such information, and this determination must also be made by the issuing authority rather than merely the affiant (emphasis added). Madden v. State, 328 N.E.2d 727, 729 (Ind. 1975).

When the probable cause affidavit is attacked by the defendant concerning a lack of probable cause on its face, the State may *not* introduce other evidence to support its contention that probable cause existed at the time of decision on the affidavit (emphasis added). Watt v. State, 412 N.E.2d 90 (Ind. Ct. App. 1980).

VI. ARGUMENT

A. The Court Should Grant Defendants' Motion to Suppress Evidence Since Cpl. Matt Campbell Unlawfully Interrogated Eight Year-Old Callie Richard at Riddle Elementary School Without First Permitting Callie to Engage In Meaningful Consultation With Her Parents.

Cpl. Matt Campbell unlawfully interrogated Callie Richard at Riddle Elementary School while she was in custody because he did not comply with the strict requirements of the juvenile

waiver statute under I.C. § 31-32-5-1. First, it is undisputed that Callie did not personally request Cpl. Campbell to come to the school and speak with her about any of the matters described in the Affidavit for Search Warrant. The uncontroverted evidence also shows that Callie was not advised of her Miranda rights prior to being questioned by Cpl. Campbell. Indeed, Cpl. Campbell knew that he was investigating a potential crime when he questioned Callie at the school and all of his questions related to the subject of marijuana. Under the circumstances, Cpl. Campbell should have known that his questions would elicit incriminating responses. Therefore, Cpl. Campbell's questions amounted to interrogation.

Second, Callie was "in custody" during Cpl. Campbell's interrogation. The fact that this situation involved an eight year-old in third grade would lead a reasonable child in Callie's situation to feel that she had no choice but to stay and answer Cpl. Campbell's questions. Furthermore, any reasonable eight year-old in third grade would not have felt free to leave the presence of not only Cpl. Campbell, but Counselor Keim and Principal Johnson as well. Significantly, all three of these adults are authority-type figures and their collective presence created a coercive atmosphere. Indeed, the situation created inherently compelling pressures which worked to undermine Callie's free will to resist and compel her to act where she would not otherwise do so freely. As a result, no statement by Callie in this instance could truly be the product of her free choice.

Furthermore, at the tender age of eight, Callie's immaturity and inexperience put her at a significant disadvantage in confronting a police interrogation. A young child, like Callie, was not equal to Cpl. Campbell in knowledge and understanding of the consequences of the questions and answers being asked, and she was unable to know how to protect her parents' interests and

her own interests or obtain the benefit of her constitutional rights. Therefore, Callie's statements were the product of custodial interrogation.

Third, since Callie was interrogated while in custody, Cpl. Campbell was required to follow the strict dictates of the juvenile waiver statute under I.C. § 31-32-5-1. However, the clear mandate of I.C. § 31-32-5-1 was subverted by Cpl. Campbell so he could create an intimidating atmosphere and obtain a confession from Callie. There is nothing from the face of the Affidavit to establish that Callie's parent or parents knowingly and intelligently joined in her alleged waiver of rights. In fact, Cpl. Campbell admitted in his deposition that he did not obtain permission from Callie's parents. As a result, the "meaningful consultation" requirement was vitiated. When children, like Callie, are in custody, the parent serves as a buffer between the juvenile, who is entitled to certain protections, and the police, who's investigative function brings the officers necessarily in conflict with the juvenile's interests. Accordingly, as there was no unilateral waiver of rights by Callie, the interrogation was illegal under both I.C. § 31-32-5-1 and the Fifth Amendment.

Finally, it should be recognized that the plain language I.C. § 31-32-5-1 and concomitant case law center on a parent's choice to determine whether his/her child can be interrogated by a law enforcement officer. The power to include a law enforcement officer in the questioning of a child implies the power to exclude. In other words, parents have a vested legal right in the statute because they have the prerogative to exclude others. Accordingly, this shared legal right necessarily extends the Fifth Amendment privilege against self-incrimination to the parents as well as to the child.

Without a doubt, the Defendants' rights were directly affected when Cpl. Campbell interrogated Callie without their permission. As parents, the Defendants obviously enjoy a

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special relationship with Callie which has well-settled constitutional dimensions. Nonetheless, the Defendants were deliberately excluded from Callie's interrogation and their statutory rights under I.C. § 31-32-5-1, which are based on the Fifth Amendment, were violated. The interrogation of Callie evidenced an approach by Cpl. Campbell which rode roughshod over the intimate parent-child relationship in order to obtain information by intimidation.

Cpl. Campbell's use of this unlawfully obtained evidence to secure the Search Warrant was a form of unjust enrichment on the part of the State. The breaking of the law by those charged with serving the public, like Cpl. Campbell, tears harder at the fabric of society than almost any other form of abuse of official powers. Here, Cpl. Campbell used the fruit of some rather reprehensible tactics to apply for the Search Warrant. By doing so, he recklessly mislead the Court when he stated in his Affidavit that he had "good cause." Such behavior undermines the effectiveness of law enforcement over time and should not be encouraged. Therefore, the Court should suppress all of the information obtained from Callie Richard as well as all evidence subsequently seized on or near the Defendants' property.

B. **The Court Should Grant Defendants' Motion to Suppress Evidence Since Cpl. Matt Campbell's Affidavit for Search Warrant Is Facially Deficient Because It Fails to Establish Probable Cause to Search Since: (1) It Does Not Contain Facts Sufficient Enough to Establish Callie Richards' Credibility; and (2) Cpl. Campbell Failed to Corroborate Any of the Alleged Information Relayed to Him from Callie Richard.**

Cpl. Matt Campbell's Affidavit for Search Warrant is facially deficient because it fails to establish probable cause to search since it: (1) does not contain any facts sufficient enough to Establish Callie Richards' credibility; and since (2) Cpl. Campbell did not corroborate any of the alleged information relayed to him from Callie Richard.

1. The Affidavit for Search Warrant Does Not Contain Facts Sufficient Enough to Establish Callie Richard's Credibility.

The requirements of I.C. § 35-33-5-2(b)(1) were not satisfied in the present case because Cpl. Campbell did not offer *any* information in the Affidavit for Search Warrant establishing Callie Richard's credibility as an informant. There is absolutely no indication in the Affidavit that Callie had previously provided information as an informant or worked with Cpl. Campbell on any other cases. In other words, Callie's credibility was *entirely* unknown to Cpl. Campbell at the time he questioned her at Riddle Elementary School. Therefore, Cpl. Campbell had a statutory duty to objectively establish her credibility on the face of the Affidavit; however, he failed to do so for the reasons stated below.

First, the allegations in the Affidavit that Callie found "what she believed to be marijuana" and that "she knows what it is because she has been around it before" are nothing more than bald and unilluminating assertions of suspicion. Although the Affidavit attempts to characterize Callie's allegations as being based on her direct observations, closer scrutiny of the language of the Affidavit shows that her credibility had not been established with sufficient clarity as to whether or not she was in fact relating first-hand information. Certainly, such a state of affairs casts a cloud over the existence of any probable cause.

With debilitating ambiguity, the Affidavit provides absolutely no indication as to *how* Callie, an eight year-old child in third grade, reached the conclusion or was even qualified to ascertain that the material described was in fact "marijuana." Specifically, the allegation that she "believed [the substance] was marijuana" is merely a conclusion, which does not make sufficiently clear *how* Callie actually knew it to be marijuana. Furthermore, there is absolutely no indication in the Affidavit indicating *how* Callie determined the substance to be marijuana when she had allegedly been around it on prior occasions, which leaves the objective observer

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with yet another question to ponder. The substance in the barn could just have easily been hay, straw or some other plant material and the substance in the house "in the drawer near the stove" could just have easily been oregano, parsley flakes or some other cooking spice. In his deposition, Cpl. Campbell admitted that he does not know a lot about the differences between hay and straw. Cpl. Campbell also agreed that children of Callie's young age have tendencies to fabricate things and tell imaginative stories.

Cpl. Campbell should have attempted to take some minimal steps to investigate Callie's conclusory allegations. For example: What were the raw facts upon which she based her conclusions? How did Callie obtain those facts? What exactly did she see or smell firsthand? Was she told any of these facts from someone else, and if so, what makes that third person credible and how did that third person arrive at that knowledge? Here, the warrant-issuing judge was required to ascertain the source of the raw data—the product of Callie's senses—and then weigh that data for himself. However, Cpl. Campbell recklessly failed to provide an objective source of the raw data to the warrant-issuing judge.

Second, Callie's description of her home in the Affidavit is of no persuasive significance with regard to her credibility. Here, the facts describing Callie's home were independently known to Cpl. Campbell for the reason that he previously attended the Defendants' wedding at the residence, which was held in the basement. Anyone at the wedding could have easily described the layout of the property. Moreover, Cpl. Campbell's wife, Rebecca, and Defendant Charla Richard are "best friends." It is certainly plausible that Cpl. Campbell obtained knowledge of the Richard property based on what his wife may have told him. Thus, Callie's description of her paren[illegible]ary provides absolutely no indication of her credibility or veracity for truthfulness.

Third, Cpl. Campbell testified in his deposition that Callie was qualified as an informant based on mere "rumors" of marijuana growing on the Defendants' property, which were never criminally connected to the Defendants. In addition, Cpl. Campbell believes that Callie was qualified to give credible information based on an unrelated arrest involving the Richards which happened "years ago"[4] and which occurred *before* Callie was even born. Not only are these matters deficient to establish Callie's credibility, but they amount to subjective suspicions and hunches which were never mentioned in Cpl. Campbell's Affidavit.

Fourth, even assuming Cpl. Campbell subjectively believed that Callie was a reliable source, such a characterization, standing alone without any supporting factual information, merits absolutely no weight. Cpl. Campbell was required to provide objective and articuable facts in his Affidavit. However, it is clear that probable cause was established by Cpl. Campbell's subjective beliefs. If subjective good faith alone were the test, then the protections of the Fourth Amendment would evaporate, and the people would be "secure in their houses, papers, and effects," only at the discretion of the police.

Finally, even assuming Callie had credibility amounting to sainthood, the warrant-issuing judge still may not accept her bare conclusions any more than the judge may accept the bare conclusions of a sworn, known and trusted police-affiant. Since the conclusory allegations of a police officer are insufficient to support a finding of probable cause, surely the conclusory allegations of an informant, like Callie, should *a fortiori* be insufficient. To hold otherwise would be an unconstitutional delegation of the decisionmaking function to unknown

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[4] The Richards' prior arrest(s), which occurred "years ago," amounts to stale evidence which cannot be utilized to support a finding of probable cause. *See, e.g.*, State v. Haines, 774 N.E.2d 984, 990 (Ind. Ct. App. 2002) ("The general rule is that stale information cannot support a finding of probable cause. Stale information only gives rise to a mere suspicion and not reasonable belief, especially when the items to be obtained in a search warrant are easily concealed and moved.")

hearsay informants which the Fourth Amendment and Article I, § 11 of the Indiana Constitution assign exclusively to the warrant-issuing judge.

In conclusion, Cpl. Campbell's Affidavit discloses absolutely no factual information from which Callie's credibility can be objectively assessed under I.C. § 35-33-5-2(b)(1). The Affidavit presented the warrant-issuing judge with little more than bald conclusions and suspicion of wrongdoing on behalf of the Defendants, without an adequate factual foundation, based on the testimony of a previously unknown eight year-old child.[3] The hearsay mountain was insurmountable and could not have constituted probable cause to search the Defendants' property.

2. Cpl. Campbell Did Not Corroborate Any of the Alleged Information Relayed to Him from Callie.

The requirements of I.C. § 35-33-5-2(b)(2) were also not satisfied in the present case because Cpl. Campbell did not corroborate *any* of the information that he obtained from Callie Richard. Here, Cpl. Campbell arrived at the school at approximately 1:00 p.m. and illegally interrogated Callie for approximately fifteen (15) to twenty (20) minutes. Thereafter, Cpl. Campbell left the school and hastily drafted the Affidavit for Search Warrant in a knee-jerk like fashion after the interrogation. Cpl. Campbell presented the Affidavit to the judge and the Search Warrant was issued at 1:58 p.m., which was approximately *fifty-eight (58) minutes* after Cpl. Campbell initially arrived at the school to speak with Callie.

All of Callie's allegations were entirely uncorroborated. While a claim of firsthand observation may ordinarily boost the credibility of the assertion, Callie's alleged statement of firsthand knowledge could have just as easily been fabricated under the circumstances to make

[3] *See, e.g.*, Williams v. State, 528 N.E.2d 496, 499 (Ind. Ct. App. 1988) (affidavit based on informer's tip was insufficient to support issuance of search warrant because it did not set forth facts within the officer's knowledge nor was there a statement concerning how the informant knew the listed items were at the named residence).

the underlying allegations appear more credible. In his deposition, Cpl. Campbell stated that he knew a "paternity suit" existed between Defendant Carl Richard and his ex-wife, Carmen Richard. Cpl. Campbell also agreed that it was entirely possible that Carmen Richard, or someone else, could have told Callie to make these allegations against her fatherDefendant Carl Richard, to spite him. Absent corroboration by Cpl. Campbell, Callie's allegations, no matter how specific, amount to little more than an anonymous tip.

As in Cpl. Campbell's case, where there is an opportunity for inquiry and investigation, inquiry and investigation should be made. Indeed, the Affidavit does not indicate that there was a shortage of time or an emergency. Cpl. Campbell was not warranted in relying upon circumstances deemed by him suspicious, when the means were at hand of either verifying or dissipating those suspicions without risk. Clearly, he neglected to avail himself of those means. Again, Cpl. Campbell should have undertaken to gather more facts making it more probable that the Defendants were guilty. This is what the probable cause requirement is all about. Doing all that one can almost guarantees that one is behaving reasonably.

When Cpl. Campbell sought the warrant based *solely* on Callie's uncorroborated statements, he failed to provide the warrant-issuing judge with *all* of the information on which he based his conclusion of probable cause, which was insufficient. Unlike Cpl. Campbell's actions, police should provide the warrant-issuing judge with the crucial information on which they base their conclusions so that the judge can competently perform his/her important function. This advances an important due process value, which is intimately related to substantive constitutional concerns, of having judges, rather than police or informants, determine whether there is probable cause to support the issuance of a warrant. If any person's allegation, uncorroborated, could

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justify a search, every citizen's home would be fair game for a variety of innocent and not so innocent intrusions.

Certainly, the exclusionary rule did not require Cpl. Campbell to obtain absolute verification of all sources supporting his Affidavit, nor did it require Cpl. Campbell provide enough information to meet the standard of proof needed for a conviction. However, Cpl. Campbell's Affidavit is so bare bones and so lacking in indicia of probable cause as to make the reliance upon the resulting warrant objectively unreasonable.

In short, Cpl. Campbell made absolutely no effort whatsoever to develop independent data to corroborate *any* of Callie's allegations. Rather than taking care to corroborate the information allegedly relayed to him by Callie, Cpl. Campbell sought a warrant prematurely. As a result, the Affidavit was not executed in objective good faith. Thus, there was insufficient corroboration within the meaning of I.C. § 35-33-5-2(b)(2) to support issuing the Search Warrant in this case.[6] Considering the totality of the circumstances, the Cpl. Campbell's Affidavit lacked a substantial basis and the search of the Defendants' property was unlawful.

V. CONCLUSION

The evidence and reasonable inferences did not provide a substantial basis for a probable cause determination to support issuance of the Search Warrant. First, Cpl. Campbell illegally interrogated Callie Richard and utilized this information as the sole basis of his Affidavit. Finally, Cpl. Campbell's Affidavit established neither the credibility of Callie nor corroborated any of the information that she provided him. When Cpl. Campbell stated that he had "good

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[6] *See, e.g.*, Illinois v. Gates, 462 U.S. 213, 239 (1983) ("Our decisions applying the totality of circumstances analysis ... have consistently recognized the value of corroboration of details of an informant's tip by independent police work."); Bradley v. State, 609 N.E.2d 420, 423 (Ind. 1993) (totality of circumstances did not corroborate hearsay where police investigation established only that anonymous caller gave correct address of the defendant and an accurate description of a crime that had in fact occurred); and Everroad v. State, 590 N.E.2d 567 (Ind. 1992) (subsection (b)(2) not satisfied where claim of firsthand observation of criminal activity was not corroborated by totality of the circumstances).

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cause" in his Affidavit, he mislead the warrant-issuing judge and showed a reckless disregard for the truth. Because the Search Warrant was not supported by probable cause, the search of the Defendants' property was unlawful. For the foregoing reasons, Defendants, CARL RICHARD and CHARLA RICHARD, by counsel, respectfully requests that this Honorable Court grant Defendants' Motion to Suppress Evidence.

Respectfully submitted,

ALLEN LAW OFFICES

BY: _____

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CERTIFICATE OF SERVICE

We certify that on the 22nd day of December, 2003, service of a true and complete copy of the above and foregoing pleading or paper was made upon each party or their attorney of record herein by depositing same in the United States Mail in envelopes properly addressed to each of them and with sufficient first-class postage affixed.

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STATE OF INDIANA)
) SS:
COUNTY OF FULTON)

IN THE FULTON CIRCUIT COURT

CAUSE NO. 25C01-0310-FC-73
25C01-0310-FC-74

FILED

FEB 09 2004

Karen Miller
CLERK, FULTON CIRCUIT COURT

STATE OF INDIANA

VS

CARL RICHARD and
CHARLA RICHARD

STATE'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS

Comes now the State of Indiana by Prosecuting Attorney, Richard A. Brown, and submits this memorandum of law in response to the Defendant's Motion to Suppress. The State believes that the Defendants in their motion and memorandum have misrepresented facts and have attempted to apply legal principles that have no application in this case.

FACTS

The State would preliminarily like to correct some of the factual allegations made by the Defendants in their motion and memorandum previously filed with the Court.

The Defendants state in their memorandum that "Cpl. Campbell agreed in his deposition that it was ***entirely possible*** that Carmen Richard, or someone else, could have told Callie to make these allegations against her father, Defendant Carl Richard, in order to spite him." Emphasis added. In fact, Cpl. Campbell stated the following:

"Q Is it possible that Callie's mother, Carmen richard, could have told her to say something to spite Carl?

A I, I don't live in that house. I don't know what she tells her.

Q But is it possible that somebody could–

A Well, again, anything's possible. (Deposition p.36, ln. 12-16)

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* * * * * * *

Q And is it possible that maybe she was saying something to hurt her father out of spite because maybe something was going on in this paternity matter?

A Back to anything's possible, I guess." (Deposition p. 37, ln. 5-7)

The Defendants' memorandum also states that "Cpl. Campbell admitted that it is possible that Callie could have been mistaken with regard to the identification of the substance alleged to be marijuana . . . In fact, based on his own professional experience, Cpl. Campbell agreed that young children of eight to nine years of age or younger *often* have a tendency to fabricate things and tell imaginative stories." Emphasis added. Officer Campbell actually said the following:

"Q Now in paragraph four of the first page of your affidavit, I'll let you find it. As you referenced before here earlier, you state that Callie found what she believed to be marijuana in the barn and your, you further stated that "she knows what it is because she had been around it before." Is that correct?

A Yes, that's what it says.

Q Now assuming this is in fact what she said, is it possible that she could have been mistaken regarding the identification of this substance alleged to be marijuana?

A Well, I guess you're saying is it possible. I guess as I've said before in other testimony, anything's possible. (Deposition p. 29, ln. 1-10)

* * * * * * *

Q Generally speaking do children, say, eight, nine years of age or younger always tell the truth when you, when you, you know, talk with them about a case or something?

A I guess generally speaking?

Q Yeah, generally speaking.

A I would say generally speaking most of the time, yes, they do.

Q Okay, do they ever–have they ever had a tendency to fabricate things when you've spoke with them? You later find out or maybe go off on an imaginated, you know, imaginative story or something like that.

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A Sure.

Q How often does that happen?

A I, I can't say–I don't know how often. I mean, it, it happens." (Deposition p. 17, ln. 6-17)

While certainly the above statements are not dispositive of any real issue in this case, the State points these out to the Court as they are good examples of the nature and tone of the Defendants' view of the facts, and the law for that matter, as they are subtly deceptive and attempt to present a picture of these events that simply is not accurate.

LEGAL ISSUES

The Defendant's have raised several legal issues in the quest for suppression of the evidence in this case. In general, the Defendants have taken valid legal principles and have attempted to inject them or apply them to facts and circumstances to which they do not apply.

First, the Defendants claim that Officer Campbell "unlawfully interrogated" Callie Richard, the 8 year old daughter of the Defendant Carl Richard, by not giving her Miranda warnings or allowing her to engage in meaningful consultation with her parent. The Defendants rely on I.C. 31-32-5-1 for the proposition that meaningful consultation was required. I.C. 31-32-5-1 reads as follows:

§§ 31-32-5-1. Waiver generally

Any rights guaranteed to a child under the Constitution of the United States, the Constitution of the State of Indiana, or any other law may be waived only:

(1) by counsel retained or appointed to represent the child if the child knowingly and voluntarily joins with the waiver;

(2) by the child's custodial parent, guardian, custodian, or guardian ad litem if:

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(A) that person knowingly and voluntarily waives the right;

(B) that person has no interest adverse to the child;

(C) meaningful consultation has occurred between that person and the child; and

(D) the child knowingly and voluntarily joins with the waiver; or

(3) by the child, without the presence of a custodial parent, guardian, or guardian ad litem, if:

(A) the child knowingly and voluntarily consents to the waiver; and

(B) the child has been emancipated under IC 31-34-20-6 or IC 31-37-19-27, by virtue of having married, or in accordance with the laws of another state or jurisdiction.

The Defendants make the leap from this statute to a claim that a *witness*, if a juvenile, can only be interviewed under the same standards as a juvenile *suspect*. The Defendants cite no case, and no case can be found that the State is aware of, that requires the police to advise a juvenile of the Miranda rights and to obtain parental consent and consultation when the juvenile is merely a witness and not a suspect. The Miranda principle, as mirrored by this statute, is to protect a person from unknowingly giving up the constitutional right against self-incrimination and clearly the police are not required to Mirandize every witness or provide meaningful consultation to every juvenile witness they talk to.

While no case discusses the application of the waiver statute to child witnesses, the cases that apply the statute make it clear that it applies only to juveniles who are suspects in a criminal investigation. *Patton v. State*, 588 N.E.2d 494, (Ind. 1992), plainly sets out the purpose of these requirements, stating the following:

> The U.S. Supreme Court has emphasized that "admissions and confessions of juveniles require special caution." *In re Gault*, 387 U.S. 1, 45, 18 L. Ed. 2d 527, 87 S. Ct. 1428 (1967). In 1972, this Court held that a juvenile's statement or confession could not be used against him unless both he and his parents or guardian were informed of his rights to an attorney and to remain silent. *Lewis v. State* (1972), 259 Ind. 431, 288 N.E.2d 138. Further, "the child must be given an opportunity to consult with his

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> **parents, guardian or an attorney representing the juvenile as to whether or not he wishes to waive those rights."** Id., 259 Ind. at 439, 288 N.E.2d at 142. The legislature codified *Lewis* in 1979. Indiana Code §§ 31-6-7-3 (West 1979) provides that a child's parent, guardian, custodian or guardian ad litem may waive any rights guaranteed to the child, provided: that person knowingly and voluntarily waives the rights; that person has no interest adverse to the child; meaningful consultation has occurred between that person and the child; and the child knowingly and voluntarily joins with the waiver.
>
> (Emphasis added).

This statute is only implicated if the statement is being used against the person who gave the statement. The Defendants have no standing to complain that Callie's rights were somehow violated in order to protect ***themselves*** from the effect of the information she gave. Clearly if there was a claim that Callie committed a crime and the State was attempting to proceed against her and sought to use this statement against her, she, and her parent on her behalf, could raise this issue for the protection of Callie's constitutional rights, but the Defendants cannot shield their own criminal activity by making a claim that another person's rights were violated, whether she is a daughter or not. (The State would note that the Defendant Charla Richard has no legal relationship to Callie Richard being only her father's wife and would have no claim whatsoever to invoke rights on behalf of Callie).

The Defendant's entire approach to this case is premised as if their rights had been violated by taking a statement from Callie. Callie was a witness, not a suspect. No one is suggesting that Callie was operating a marijuana processing operation at 8 years of age. Her privilege against self-incrimination is not implicated. The Defendant cannot vicariously assert a right against incrimination of himself through his daughter. As such, Callie's 5th Amendment rights were not implicated in any way and the long discussions about whether she was in custody, whether she was advised of her rights, whether she was interrogated, and whether there was meaningful consultation with her parent are irrelevant. The statement is not being used against her in any way. The Defendants, especially Charla, have no standing to invoke Callie's 5th Amendment rights in the context of this case.

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Under Defendants' rationale the police could never talk to a child victim without obtaining the consent of the parent. They would be required to contact the parent and ask if he or she would mind if they talked to the child about the sexual molestation that the parent had been perpetrating on the child, for instance. No case could ever be investigated if the information about the parent's criminal acts were witnessed by the person's child. The Defendants cite many cases, but none of them remotely support the ultimate position they are taking. The State would further point out that even if the Defendants were correct about the application of I.C. 31-32-5-1 to this setting, the Defendant Carl Richard could not have been the person to consult with Callie as he would clearly have an interest adverse to the child under subsection (2)(B).

In summary there was no right that Callie was waiving and the juvenile waiver of rights statute and *Miranda* does not apply.

The Defendants next argue that the Affidavit for Search Warrant is facially deficient because (1) it did not provide facts to establish Calli's credibility and (2) the information that Callie gave Officer Campbell was not separately corroborated. This really is the same argument since corroboration is but one way to establish the credibility of an "informant." Apparently the Defendants concede that the facts presented in the affidavit are in and of themselves sufficient to establish probable cause if they are otherwise credible.

The defendants again go into great detail concerning legal principles which are accurately stated, but which have no application to this case. They label Callie an "informant" and then invoke all of the various rules relating to informants such as the requirement to corroborate. The only problem is that Calli is not an informant. Calli was a person identified in the affidavit, i.e. she was not anonymous, and she was a citizen witness to criminal acts. Almost all of the cases cited by the Defendants deal with anonymous tips or unidentified informants and have no application to this

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situation. These include *Illinois v. Gates, United States v. Reddrick, Jaggers v. State, Seltzer v. State*, and *Powers v. State*. One case cited by the Defendants does deal with an identified person and sets out the rule for issuance of a search warrant where hearsay is involved. In *Houser v. State*, 678 N.E.2d 95, (Ind. 1997) the Supreme Court stated the following:

> "Upon receiving a request for a search warrant, the task of the issuing magistrate is to make a common sense determination, based on the totality of the circumstances, that there is a fair probability that a particular place contains evidence of a crime. Gates, 462 U.S. at 238. In addition to these federal constitutional requirements, Indiana has prescribed by statute the minimum information that must be presented to show probable cause. When based on hearsay, as here, the affidavit must "contain reliable information establishing the credibility of the source and of each of the declarants of the hearsay and establishing that there is a factual basis for the information furnished," or "contain information that establishes that the totality of the circumstances corroborates the hearsay." . . .
>
> The only real question presented in this case is whether, as the warrant statute requires: (1) White was a credible source; or (2) his hearsay statements were corroborated by surrounding circumstances described in the affidavit. **Either is sufficient under the statute.**" (Emphasis added).

Thus, if Callie is a credible source that is the end of the inquiry. If she was not, only then does the issue of corroboration of the information come into the analysis. Under Indiana law Callie is presumed to be credible because she is identified and was merely a witness to criminal activity. *Pawalski v. State*, 380 N.E.2d 1230 (Ind. 1978); *Allen v. State*, 798 N.E.2d 490, (Ind. App. 2003); *Brooks v. State*, 526 N.E.2d 1027. In *Allen* the Court stated:

> "In the instant case, Allen attacks the content of the affidavit, contending that the affidavit fails to comply with the mandates of I.C. §§ 35-33-5-2, requiring that affidavits based upon hearsay establish the credibility of each of the declarants. Our review of the record shows that information in the affidavit came from interviews with witnesses to the various murders and from interviews with the suspects, as well as information discovered by the officers themselves in the course of their investigation.
>
> In dealing with witnesses who have personally witnessed the murders, our supreme court has previously held that eyewitnesses and crime victims are considered presumptively reliable unless circumstances exist which call into question their credibility. See *Pawloski v. State*, 269 Ind. 350, 380 N.E.2d 1230, 1232 (Ind. 1978). Thus, the information that witnesses identified Kendrick Morris (Morris), Steven Kendall (Kendall), Wesley Young (Young), and Jamal Kirklen (Kirklen) (collectively the "suspects") as the shooters in the string of murders is presumptively reliable."

The *Brooks* case is very similar to the present case and actually the basis of the warrant in the present case is stronger than the facts of *Brooks*. In that case a father found his 13 year old daughter

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to have some marijuana and when she was confronted by her father she told him she got it from a grocery bag in the dresser drawer of her mother's bedroom, the parents being divorced. The police talked to the *father* who related this information and based their affidavit for a search warrant on that conversation. The Court said:

> "Detective Morris's affidavit is clearly based upon "hearsay on hearsay" – that the daughter was the source of the crucial information, the father the declarant and Detective Morris the affiant. Though such an affidavit is not inherently inadequate, *Pawloski v. State* (1978) 269 Ind. 350, 380 N.E.2d 1230; *Wells v. State* (1979) 1st Dist. Ind.App., 397 N.E.2d 1250; see also *United States v. Smith* (8th Cir. 1972) 462 F.2d 456, it must satisfy the requirements set forth in I.C. 35-33-5-2. . . .
>
> In contrast, the affidavit here at issue offers the declarant's as well as the source's full name and address, the declarant's relationship to the source, and the facts upon which the declarant based his conclusion.
>
> An affiant need not specify the basis for credibility of a declarant if credibility is demonstrated by the circumstances. See *Wells*, supra, 397 N.E.2d 1250; see also *Pawloski*, supra, 380 N.E.2d 1230. In *Wells*, supra, appellant argued that a bank [**7] official's description of the bank robber could not be used to support probable cause for a search warrant because the affidavit included neither a statement that the bank official, a citizen-informant, spoke with personal knowledge, nor a statement that the affiant knew the official to be a credible person. The court wrote: "It is reasonable for an official of a bank branch which has been robbed to be the person who reports the robbery to the police." 397 N.E.2d at 1257. Similarly, it is reasonable for a parent of a minor child found to possess marijuana to be the one to inform the police of the source.
>
> In *Pawloski*, supra, 380 N.E.2d 1230, our Supreme Court indicated that generally victims and witnesses of a crime "are to be considered reliable for the purpose of determining probable cause unless incriminating circumstances exist which cast suspicion upon the informant's reliability." 380 N.E.2d at 1232-33. It then apparently utilized this test as a gauge in determining the credibility of a declarant who was neither victim nor witness but a friend and confidante passing the defendant's private admission on to the police. The court found the declarant's information to constitute [**8] probable cause for the defendant's arrest, specifying that no circumstances existed to cast doubt on the declarant's credibility. As in *Pawloski*, supra, the father/declarant here was neither victim nor witness. He was, however, a citizen-informant and a concerned parent. In the absence of questionable circumstances, his credibility is not legally suspect.
>
> We are cognizant of implications of unreliability which could arise from the father's position as an ex-husband incriminating his former spouse and her boyfriend. However, as the Court noted in *Pawloski*, supra, 380 N.E.2d 1230, the sufficiency of the evidence of probable cause must be determined case by case. Though the circumstances here might in some minds trigger a need for further inquiry, we recall the preference to be accorded warrants, *Upton*, supra, 466 U.S. at 727, and defer to the judge within whose province it lay to assess the father's credibility."

In this case Officer Campbell spoke to 8 year old Callie Richard because Callie had confided

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in her school counselor that she had seen marijuana in the barns and house where she lives. The fact that she told her counselor on her own is in itself an indicia or reliability. She told Officer Campbell specifically what she had seen and where she had seen it and related to him that she knew it was marijuana because she had been around it before. Further, her description of plants drying in an upper area of a barn, plants in camouflaged bags, and plants previously growing in a secret room in the basement are all strongly corroborative of the identification of the plants as marijuana. And beyond those factors she is presumed to be credible as a mere witness to the criminal activity as opposed to an anonymous tip or an unnamed informant working for the police. The Affidavit for Search Warrant meets all the requirements of establishing probable cause under the totality of the circumstances presented to the judge who issued the warrant.

For all of the above reasons, the State would respectfully request the Court to deny Defendants' Motion to Suppress.

Richard A. Brown, Prosecuting Attorney
Fulton County, Indiana

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was Mailed by United States First Class Mail to Dale Allen, counsel for the Defendant, at 701 E. Lincolnway, Valparaiso, IN 46383 this 5th day of February, 2004

Richard A. Brown

FILED
IN COURT'S OFFICE
JUN 07 2004
CLERK, FULTON CIRCUIT COURT

IN THE

INDIANA COURT OF APPEALS

APPELLATE NO: _____

CARL RICHARD, APPELLANT/PARTY BELOW	)	APPEAL FROM THE FULTON CIRCUIT COURT
	)	
VS	)	TRIAL COURT CASE NO.: 25C01-0310-FC-00073
	)	
STATE OF INDIANA, APPELLEE/PARTY BELOW	)	BEFORE THE HONORABLE DOUGLAS B. MORTON, JUDGE

TRANSCRIPT OF EVIDENCE

VOLUME I of 1

PAGES 1 to 149

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LORENA CRISSINGER

OFFICIAL COURT REPORTER

FULTON CIRCUIT COURT

APPEARANCES

COUNTY OF FULTON)

IN THE FULTON CIRCUIT COURT

CAUSE NO.: 25C01-0310-FC-73

STATE OF INDIANA,)
Plaintiff)
VS)
CARL RICHARD,)
Defendant)

TRANSCRIPT OF MOTION TO SUPPRESS

BEFORE THE HONORABLE DOUGLAS B. MORTON

JUDGE OF THE FULTON CIRCUIT COURT

DATES: FEBRUARY 10, 2004

LORENA CRISSINGER

OFFICIAL COURT REPORTER

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MOTION TO SUPPRESS

THE COURT CONVENED ON FEBRUARY 10, 2004, AND THE FOLLOWING EVIDENCE WAS PRESENTED:

PRESENT:

JUDGE MORTON, Judge of the Fulton Circuit Court

MR. RICHARD A. BROWN, Prosecutor

MR. DALE ALLEN, Counsel for Defendants

MR. MATTHEW BARRETT, Counsel for Defendants

Charla Richard, Defendant

Carl Richard, Defendant

THE COURT: This is ah...cause number 0310-PC ah...74 and 74, *State of Indiana versus ah...Carl Richard and Charla Richard* and I believe it is also, it probably does not affect 72 does it?

MR. ALLEN: The arson charge?

THE COURT: Yes.

MR. ALLEN: No it doesn't, that's a separate cause.

THE COURT: Okay. Um...Carl is here. Charla appears not to be here.

MR. ALLEN: She's expected to be taken from the jail to...to at least...she's not expected to participate but ah, you know she is a defendant, I think she's entitled to at least hear the arguments.

MR. BROWN: Yeah I didn't think about that. I forget...I forget she's...I know at one point we were doing just Carl and then I forgot that we were...

MR. ALLEN: I think the Judge joined the two (2) for purposes of this motion.

MOTION TO SUPPRESS

MR. BROWN: Right.

MR. ALLEN: Motion to Suppress so...

THE COURT: Ah...

MR. BROWN: So we need to have her brought over, I didn't think about...

THE COURT: Yeah that seemed better then hearing the same evidence twice, I ah...

MR. ALLEN: Yeah, it does.

THE COURT: Okay.

MR. BROWN: I think we all agree with that. I didn't think about calling though. We've never brought...

THE COURT: Alright. We need to call and get Charla over.

MR. ALLEN: We were over there about an hour ago so I think they're kind of expecting a call.

THE COURT: Okay. Well we'll come back and try again then.

BREAK

THE COURT: Have a seat. Let's start again. Um...0310-FC-73, 74 here on the pending Motion to Suppress. Are you prepared to proceed Mr. Allen?

MR. ALLEN: We are Judge.

MR. BARRETT: Ah...Judge, before I begin, Matthew Barrett here too on behalf of the defendants. I'd just like to point out for the record that we just now received the State's Memorandum and Opposition to Defendant's Motion to Suppress and two (2) drawings, just for the record. I have not had time to review that or...or...um examine it. Defendant's move the Court to suppress...

THE COURT: Matthew I did not catch your name.

MOTION TO SUPPRESS

MR. BARRETT: Matthew Barrett.

THE COURT: Are you doing to be doing most of the heavy lifting for the defense in this proceeding?

MR. BARRETT: Yes Your Honor. The entire Motion to Suppress.

THE COURT: Mr. Brown you prepared to proceed?

MR. BROWN: Yes Judge.

THE COURT: Opening remarks Matthew.

OPENING REMARKS:

BY: MR. MATTHEW BARRETT

MR. BARRETT: Thank you Your Honor. Ah defendants move the Court to suppress all the evidence and derivative evidence obtained from the October 13th, 2003 search on their property. Your Honor I will briefly summarize a section labeled as, statement of relevant facts, which is contained within defendants memorandum of law. At about one (1:00) p.m. on October 13, 2003, Corporal Matt Campbell, the Rochester Police Department, drove to Riddle Elementary School at the request...request of a school counselor. The counselor advised Corporal Campbell that eight (8) year old Callie Richard, a third grader at the school, and daughter of the defendants, allegedly approached her and stated that she saw plant material in her barn that she believed to be marijuana. Corporal Campbell, the counselor and the principal, all three (3) spoke with Callie about this matter in a room, at the school for approximately fifteen (15) to twenty (20) minutes. Corporal Campbell did not obtain permission from Callie's parents before he questioned her and he did not read Callie any Miranda warnings. Immediately after Corporal Campbell questioned Callie, he drove to the Rochester Police Department and

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drafted the Affidavit for Search Warrant. Corporal Campbell submitted the affidavit to the Judge, who signed it at about, one fifty eight (1:58) p.m. on the same day which was about fifty eight (58) minutes after Corporal Campbell initially arrived at Riddle Elementary School to speak with Callie. Corporal Campbell then executed the search warrant on the Richards property. Defendants submit two (2) over all grounds today, for suppression. First, Corporal Campbell unlawfully interrogated eight (8) year old Callie Richard at Riddle Elementary School without first permitting Callie to engage in meaningful consultation with her parents, and Second, Corporal Campbell's affidavit is facially deficient because it fails to establish probable cause to search since one (1), it does not contain facts, objective facts, sufficient enough to establish Callie Richard's credibility and two (2), Corporal Campbell failed to collaborate any...any of the alleged information related to him from Callie. Regarding the first round for suppression, Indiana's Juvenile Waiver Statute required Corporal Campbell to first obtain permission from Callie's parents before he could interrogate her at Riddle Elementary School. The purpose of the statute is to per...to permit meaningful consultation with a child's parents due to the immaturity of children. Indiana Courts have held that the Juvenile Waiver Statute must be strictly enforced. This provides a necessary buffer between a child and the investigative function of the police. Children of this tender age, your honor, certainly are not equal to the police and do not understand the consequences they are asked. Corporal Campbell admitted, in his deposition, that he did not obtain permission from Callie's parents before he questioned her. It's also important to note that Callie did not independently contact Corporal Campbell and request to speak with him at the school. And for purposes of the Juvenile Waiver Statute, Callie was certainly in custody at the time of Corporal Ca...Campbell's interrogation. At the time Callie was an eight (8) year

old third grader who was being questioned by three (3) adults. All three (3) of whom were authority type figures. A school counselor, a principal and a law enforcement officer. All three (3) authority type figures. One can only speculate to the types of leading, coercive and incriminating questions that were being forced upon this young child. Custody does not require a formal arrest, your honor, but rather, just a situation where a reasonable person would not have felt free to leave. In this case we have a reasonable eight (8) year old, in Callie's position, would not have felt free to leave the presence of these three (3) adults, again, all three (3) authority type figures who were questioning her. The situation obviously created some inherently compelling pressures which worked in her mind, her free will, and no statements, absolutely no statement by Callie could have truly been the product of her free choice. Corporal Campbell did not...he did not even bother to give any Miranda warnings to Callie, which he readily admitted in his deposition. In addition, the plain language of the Juveniles Waiver Statute focuses on a parents choice to determine whether his or her child can be interrogated by a police officer. The power to include a police officer in a questioning of a children implies the power to exclude. In other words, parents like the Richards, have vested legal right in the statute because they have a prerogative to exclude others. Now this...although there is no specific case law on this, your honor, this shared legal right necessarily extends the fifth amendment privilege against self incrimination to the parents as well as to the child. I did site on page nine (9) of my memorandum ah...two (2) Seventh Circuit Court cases that said, even a third party who had been illegally interrogated can prejudice a defendant's right to a fair trial. Same principle applies in this case. My clients have a relationship with Callie that is well established with...with constitutional dimensions. As I stated in our memorandum, the Indiana Supreme Court

has stated that the parent/child relationship is of a sacred and special privilege. Corporal Campbell invaded the sacred and special privilege when he illegally interrogated Callie outside of the presence of her parents. The State should not be permitted to profit from Corporal Campbell's illegal acts, otherwise, the Juvenile Waiver Statute would be rendered meaningless. Now...

THE COURT: Matthew before you take off any further. I ah...walked into the room think that I was going to hear an opening statement from each side, then hear evidence and then hear closing comment. Um...and what you're doing sounds to me as if you feel like you are dealing upon...with an agreed statement of facts.

MR. BARRETT: No, your honor, we're not. It's not an agreed statement.

THE COURT: Okay.

MR. BARRETT: Yes.

THE COURT: So this is a...you are in fact in opening statement? Right now?

MR. BARRETT: Yes. This is my presentation theory.

THE COURT: Okay.

MR. BARRETT: I'm...I'm sorry. I...I should have probably clarified that with you your honor.

THE COURT: You are...you're fine. Go right ahead.

MR. BARRETT: Um...I would note these are...these have now been stipulated with the State and ah...

THE COURT: Go ahead.

MR. BARRETT: Okay. I do apologize. Now regarding the second ground for suppression ah...your honor. I.C. 35-33-5-2(b), required Corporal Campbell's affidavit to um...contain objective facts...objective facts sufficient enough to establish

Caldy...Callie's credibility or, in the alternative, contain information that establishes that the totality of the circumstances corroborates the heresy that she provided. Corporal Campbell's affidavit, is facially deficient under both subsections of the statute. First, subsection (b)(1) was not satisfied because the affidavit does not contain any reliable objective facts which establishes Callie's credibility as a heresy declarant. Corporal Campbell had a statutory duty. He had a statutory duty to establish Callie's credibility. It was...it was entirely (inaudible) when he questioned her. How...however there's absolutely no indication in the affidavit that he did so. The allegations in the affidavit that Callie found quote, "what she believed to be marijuana", end quote, and that she, quote, "she knows what it is because she had been around it before", end quote, are simply bald and unilluminating conclusions on their face. The affidavit provides absolutely no indication to the objective reader as to how an eight (8) year old child in third grade, like Callie, was qualified to make such a conclusion that the substance was indeed marijuana. She could of simply ah...been told this by an unknown third party, but we simply don't know. Furthermore, there is no indication on the affidavit indicating how...how Callie determined the substance to be marijuana when she allegedly been around it on a prior occasion, which leaves, again, the objective observer with yet another question. An informant who does not speak of personal knowledge may well be passing on (inaudible) rumor or just gossip. As I stated in our memorandum, the substance in the barn could just of easily been hay or straw or some other type of plant material. The substance in the house, in the drawer near the stove, as the affidavit states, could have easily of been parsley flakes, oregano or cookie spice from a child's point of view. Let's look at what Corporal Campbell stated in his deposition your honor. Corporal Campbell agreed that it is possible that the substance in the barn that Callie

referred to as marijuana could have been hay, could have been straw, could have been corn stalks or some other form of plant material. In fact Corporal Campbell admitted that it is entirely possible that Callie could have been mistaken with regard to the identification of the substance alleged to be marijuana. Based on his own professional experience Corporal Campbell agreed that children of Callie's young age have tendencies to fabricate things and to tell imaginative stories. Furthermore Callie's description of her residence and property contributes absolutely nothing to her credibility. It's just a description. I mean she lives there, your honor. Um...that's all that establishes. Corporal Campbell had independent knowledge here to because he had attended a wedding in the Richard's basement approximately one (1) year prior to the search. He also had...he also could have easily gained independent knowledge of the lay out of the Richards residence and property because his wife and Charla were best friends, as he stated, at the time. In addition, Corporal Campbell testified that Callie was a qualified informant based on mere rumors. I believe that was his term. Rumors of marijuana on the Richards property which was never criminally connected to them. I think it was some type of an eradication at the time. Callie...and Corporal Campbell admitted in his deposition, that Callie wasn't even born at the time that these rumors were circulating. Now establishing Callie's individual, her individual credibility on rumors, subjective rumors, which occurred years before she was born, is utterly perplexing and provides no basis of establishing, again, her individual credibility. Besides these allegations were not even included in the affidavit and if they did, in fact, exist they should have been placed in there, because that's what the warrant issuing Judge relied upon when he issued the Judge...or the ah...warrant. Finally, even assuming that Callie had credibility here amounting to Saint hood, the warrant issuing Judge still may not accept her bare

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conclusions anymore then um...the Judge may accept the...the bare conclusions of a sworn and trusted police happening. Establishing Callie's credibility is important in this case, your honor, in order to avoid the possibility of wholesale perjury by Corporal Campbell. When search...when a search is based on a probable cause affidavit and is challenged as being unconstitutional, all the police officer, all he simply needs to say is that he relied upon a credible informant, therefore, a police officer in Corporal Campbell's position will always have a, I guess you could say, like a Jeannie like informant, ready to ah...ah...legalize his affidavit. Therefore, under subsection (b)(1) of the statute, eight (8) year old Callie Richard ah...was not a credible informant. The face of the affidavit provides no objective evidence to say otherwise. Finally, subsection (b)(2) of the probable cause statute was not satisfied either because Corporal Campbell did not corroborate any...any of the information that he allegedly obtained from Callie. Corporal Campbell arrived at the school about one (1:00) p.m. Illegally interrogated Callie for approximately fifteen (15) to twenty (20) minutes. He left and drove to the police station to draft the affidavit and then presented it to the Judge who signed it at one fifty eight (1:58) p.m., or fifty eight (58) minutes later. That's probably including the drive. Now your honor that's moving pretty quick. The...the affidavit was drafted in a hap hazard fashion without any attempt by Corporal Campbell to corroborate or investigate any of Callie's alleged statements. (Inaudible) stated in our memorandum. Corporal Campbell stated that he knew of a paternity suit which existed between defendant Carl Richard and his ex-wife Carmen Richard at the time that he drafted this affidavit. Corporal Campbell agreed in his deposition that it was entirely possible that Carmen Richard, or someone else, could have told Callie to make these allegations against her father in order to spite him. As in the present case where there is an

OPENING REMARKS BY MR. BARRETT

opportunity for inquiring investigation, inquiry and investigation should be made. That was his job, to make sure that these possibilities were narrowed or did not exist. Corporal Campbell relied upon nothing but subjective hunch, suspicion and conjecture when he applied for the warrant. He should have taken some...some minimal steps to verify what Callie was saying. Doing all that one can almost guarantees that one's acting reasonable. If any person's uncorroborated and allegations were enough to justify a search, then anyone's home would be fair game to a search, your honor, and the warrant requirement would be rendered meaningless. The probable cause requirement does not require absolute verification. I am not arguing that. But at least it does require submittable steps towards verification which never at all occurred in the present case. Now based on the totality of the circumstances, Corporal Campbell's affidavit contains nothing more then bare bone conclusions and offers no objective evidence of corroboration which is required under subsection (b)(2). Based on all the designated evidence, your honor, Corporal Campbell's affidavit did not provide a substantial basis which is the standard for the issuance of the search warrant. Corporal Campbell swore that he had good cause in his affidavit, he mislead the warrant issuing Judge and showed a reckless disregard for the truth and for all these reasons, defendant's respectfully request that this Court grant their Motion to Suppress. Thank you your honor.

OPENING REMARKS:

BY MR. BROWN:

THE COURT: Opening remarks Mr. Brown.

MR. BROWN: Your Honor I like to... I inquire as to whether you've read those proposed prior memorandums or not?

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OPENING REMARKS BY MR. BROWN

THE COURT: Ah...I have scanned them, to say that I have read them would be an over statement.

MR. BROWN: (inaudible). I didn't want to read mine I guess. Um...let me just say simply...well first let me say for the record that it's been brought up, that ah, the defense...the defendant's did receive part of my memorandums today and I tried to get that out last week and was not done with them Friday, finished them Sunday and mailed it in the hope that they would get it yesterday, I didn't know what time frame the mail between here and Merrillville (inaudible). I guess I wasn't able to get it done until this weekend. Um...secondly is the two (2) diagrams he referred to are just something that I gave to them as additional discovery that I thought they wanted but...regardless of that. The...I guess about the only thing we agree with (inaudible) that there are two (2) basis they're relying on to suppress this evidence. (Inaudible) um...I would submit that nothing they they've...any...I can't remember your name and I apologize?

MR. BARRETT: Matthew Barrett.

MR. BROWN: (inaudible)

MR. BARRETT: Barrett.

MR. BROWN: I'm sorry.

MR. BARRETT: Sure.

MR. BROWN: I don't think anything Mr. Barrett just said is really correct in the context of this case. They have taken legal principles and applied certain situations and tried to apply them to areas where they do not um...first and foremost is the Waiver Statute that they refer to, the Waiver of Rights Statute, the juvenile's simply does not apply to a situation where you're interviewing a juvenile as a witness. It only applies to ah...it only comes into application when you don't...if you are taking or have taken the

statement, an incriminating statement, where a juveniles a suspect as to having committed a crime. Ah...a statement against a juvenile is only admissible against them if you follow procedure to that statute. It has nothing to do with just talking to people as witnesses any more then Miranda does to an adult if you're just gonna go up and interview a witness they don't have be Mirandize (sic). Ah...you're entering this as an information gathering ah...interview with Callie had...had...her rights are not implicated in anyway. The statute and we site...ah...there are no cases on this because the statute had never been applied this way and there's no case that's would say it is applied in (inaudible) situations, as far as that goes, but the case, can be, to make it very clear as to what the purpose of that is and ah...the one I sited in my memorandum ah...*Patton versus State* (inaudible) the Supreme Court decides the admissions and confessions of...U.S. Supreme Court, decides that the admissions and confessions require special caution. Admissions and confessions of juveniles require special caution. (Inaudible) 6th or 7th Supreme Court case. 1972 this Court, that'd be the U.S. Supreme Court, held that a juvenile's statement or confession could not be used against him unless both he and his parents or guardian were informed of his rights to an attorney and to remain silent, further, they must be given an opportunity to consult with his parents or an attorney, and they go on to say that the legislature codified this rule in 1979. Present statute...the present statute is the statute you have today. It never changed. That statute and those rules come by a situation where the juvenile's rights are being waived. In this case their rights against self incrimination. Could be other rights but that's the only one that's implicated here. This is not implicated by the defendant's parents on (inaudible) some rights to protect the parents from being incriminated. That's what they're really asking you to do today is just to say, Carl...this...this cannot apply to Charla anyway cause she's

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not a parent, she's not related to Callie, but Carl has a right to invoke this statute in order to protect himself from being incriminated, by this law, and that's what they're really asking you to do. This statute does not have that implication what so ever and once you get past that point the issues of whether she's in custody or if she's advised of her rights (inaudible) a foundation or...all those things are irrelevant because that statute does not apply to this situation. As far as the ah...warrant, the application for the warrant, again, that's a misstatement of principle that they apply to this case. The defendants label Callie as an informant. She's not an informant. I think I said in...I think all but maybe one of the cases that they site, and I may not be quite right about that...one (1) or two (2), I said it in my memorandum, I listed them, all the other people are anonymous tips or confidential...unnamed confidential informants used by the police. Those situations are different then what we have here. You have an anonymous source or a unnamed confidential informant that you rely on, then those rules are implicated and you have to somehow establish the credibility of the informant or, and one way that you can establish credibility is through corroboration. (Inaudible) two (2) requirements here. You have to establish the credibility of the informant, and one way to do that is by corroboration. When you don't have that situation where you have a...a what they call a citizen witness ah...they are presumed to be credible. Callie is nothing more then a citizen witness for us. Whether she's eight (8) years old or not she's a person who witnessed (inaudible) activity at her house and she reported it. She is known...she is known to be...the court who issued a warrant, that is, Matt Campbell didn't come in and say, Judge, an unnamed person ah gave me this information. He came in with an affidavit that said, Callie Richard gave me this information. And exactly how and where he obtained that information from. Those rules still apply. Now she still has to be credible. The

credibility requirement applies. But she is, under Indiana Laws, presumed to be credible and I've sited cases on that or referred to this. It's no different then ah...the person, the store clerk, who was just robbed and the officer takes a statement and the clerk says, it was ah...Joe Smith who just robbed me, I know him, I went to school with him, or whatever the case may be. He doesn't have to go out and corroborate that witnesses testimony. He doesn't have to go out and find out facts that...that will tell the Court that this clerk is a credible person. They're presumed to be credible. People who have no other ah...motivation, people who are just witnesses to events are presumed to be credible. We could quote ah...*Houser v. State* which is actually a case sited that depends, that has a somewhat similar situation. The only real question for this, in this case, is rather the warrant statute is...this is a statute they're siting. One (1), White, White was the informant, so to speak. (Inaudible) a credible source or two (2), heresy that they've corroborated with. Now you got all new circumstances. Either is sufficient under the statute. That's why I'm saying we're only talking about one (1) issue here. Um...I think the case that is...that I can find them and some of this situation and frankly I would say even eager by (inaudible) situation because ah...*Wells v. State*, cited in my memorandum. In that case the father had found his thirteen (13) year old daughter in a possession of marijuana. He basically said, where's that...where did that come from? A di...a divorced father. She said, I got it out of the bag of my...in a dresser in mom's room. In a bedroom at mom's house. He calls the police. The police come, he gives them the marijuana and tells the police, my thirteen (13) year old daughter was in possession of this and she told me that it was at her mother's house in a dresser, ya know, so he put that in the affidavit and they found out that to be perfectly acceptable. Even though it was actually two (2) layers to heresy. The officer...the father stated, the officer who was

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here today (inaudible) when my daughter was (inaudible). The officer never talked to the daughter. He's relying entirely on fathers statements as to what the daughter said and that case point out, almost the exact situation here, but while there might have been some motive of the father, ex-husband, to do something (inaudible) but that wasn't sufficient to gain and presume credibility to that witness. The witness, the father, would presume to be a credible witness cause he had reported something that he had seen and heard and he found that, that was an admirable basis to issue a search warrant of the mother's house where the marijuana was found. It's pretty hard to differentiate that case from this except our's is even better because we...stronger because we don't have any intermediary. We've gone directly...well, we've gone directly to the witness that gave him that information. Um...I think the odds...once you get past Callie's presumed credibility, that is once you know that she is a credible witness, the information that she provided the officer is almost self corroborating in the sense that...the...take the case (inaudible) case of the (inaudible) rights says this is a common sense approach, the Judge is entitled to look at the totality of the circumstances, that is, the Judge issued a warrant um...with good common sense and (inaudible) and you look at all the facts and you determine whether he was credible or how he (inaudible) probable cause (inaudible). The probable cause is invariably...is invariably (inaudible) within. She told Officer Campbell that she had seen substance or, she didn't use the word substance, she'd seen the stuff that she thought was marijuana cause she's seen marijuana before, but she goes on to say, it's not just a...a...conclusion, she goes on to say that she saw these plants in the barn, one of the barns and in a duffle bag, camouflage duffle bag, that she saw the same material in the upper portion of the barn drying, being dried, and she saw the same material in a kitchen dresser drawer or...kitchen (sic)...kitchen drawer and a bedroom

dresser drawer of her home and also, and I think this is the clincher so to speak, at the same...at that...at a prior time she had seen these type of plants growing in a secret room in the basement. Now when you combine all those facts together there is really only one conclusion as to what that is. It's not hay. You don't grow hay in your basement. You don't dry hay in the attic of the barn or the upper part of the barn. Not...not in this sense. You can't, actually you could, you better not be (inaudible) in a barn. All those things are pointing to...and again I'm talking probable cause here, not proof beyond a reasonable doubt or even (inaudible) is something much less then that here. All this points to...all that points to a corroboration of what she was saying. I think it's marijuana, here's what I saw. Those things add up to, really only one thing in terms of a probable cause determination, and that's marijuana. The warrant, the affidavit is entirely sufficient ah...the statement was taken entirely legally and the affidavit or the ah, sorry, the warrant (inaudible). Obviously we don't think anything should be suppressed thus far. There's another thing I want to comment on. I think it is in my memorandum, that ah...Mr. Barrett (inaudible) hear me say (inaudible) I think ah Officer Campbell, through his deposition, (inaudible) through those is he says things like, Matt admitted it. It was entirely possible. The word entirely does not appear in any of his answers. Entirely possible has a various cycle which you can summarize by saying that these are all a series of questions for Officer Campbell. He did not say what he originally wanted him to say so he reverted to the old question, well, wouldn't it possible and I think Officer Campbell's uniformly answered those questions, well anything's possible. That...that's the context of those allegations being made. Is it possible that Carmen Richards told Callie to say any of this stuff and, you know, the response was, anything's possible. It's hard...hardly (inaudible) to the issue that you have to decide here today as to whether the

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information obtained by Callie was ah...adequate, properly obtained and adequate to establish probable cause.

DEFENSE PRESENTS ITS EVIDENCE

THE COURT: Evidence Matthew.

MR. BARRETT: Ah just as a response here, your honor...

THE COURT: Did you have any evidence to present?

MR. BARRETT: Ah...none beyond what I've already presented unless the officer's going to be called today I'm...I have evidence if he is going to be called.

THE COURT: I asked you a minute ago whether we had any um...stipulation of facts and you said no. Did I understand you to say that you were resting without presenting evidence?

MR. BARRETT: Ah we just admit...move to admit the deposition, your honor, from Officer Campbell.

THE COURT: Do I have one?

MR. BARRETT: I sent one to the Court. I filed it. I believe there were four (4) or five (5) exhibits I filed with my motion.

THE COURT: It's your Exhibit A attached to the motion. Okay. So you'll be offering A and resting?

MR. BARRETT: Yes I would but I'd also like to cross the witness...if the State's going to call the witness.

THE COURT: I...I understand you have the right to cross examine but you're not calling him?

DEFENSE PRESENTS ITS EVIDENCE

MR. BARRETT: Yes your honor. I did site that in my facts and I would stand by my facts.

THE COURT: Okay.

MR. BARRETT: I'm sorry I guess I didn't understand you. I made pin point sites in my facts and I stand by those.

THE COURT: Mr. Brown...Mr. Brown did you have any objection to ah...A being, actually it was an attachment I'm not sure that ah...there is an appropriate way for you to object to it but did you have any objection to...

MR. BROWN: I do object to it, I guess...well he can file anything but we're talking about evidence in this hearing with...with...(inaudible. That's a discovery deposition with a lot of (inaudible) and as far as I'm concerned, Judge, (inaudible) information (inaudible) and I do (inaudible) with that (inaudible)

MR. BARRETT: Your honor I could to...

MR. BROWN: And...and...before you go on I guess I'm a little confused here cause in the past you've always...the State has always proceeded on the belief that we have the burden of proof (inaudible).

THE COURT: Yeah it's his. I...I know and it's his motion and your ah...this rule provides you with the burden of proof on this and um...I guess I was just treating it as if he's the moving party, ah...frankly I think he can rest without presenting any evidence um...Matt is the simplest thing gonna be for you to simply proceed here? Mr. Brown?

MR. BROWN: Well I...I...my intention, one way or another, is to call Officer Campbell but I guess I wasn't sure where we were...who was doing what here.

MR. BARRETT: I didn't receive any objections ah to this piece of evidence when I filed this on December 20th and December 22nd I therefore assumed Mr. Brown

DEFENSE PRESENTS ITS EVIDENCE

agreed to it so that's why I wasn't prepared to respond.

MR. BROWN: Well I guess I'm not aware I have to object to the admitting of attachments. I can not stop you from filing stuff but I don't think it's necessarily evidence in a hearing.

THE COURT: Ah...I know it applies to civil complaints and I was thinking that it applied to a...a variety of other settings besides that, but there is a Trial Rule that provides that ah...attachments to pleadings are deemed ah...either admitted or admissible at hearing unless objected to specifically.

MR. BARRETT: And it's Rule 10.

THE COURT: Ah...

MR. BROWN: Well you're faxing me (inaudible) because I'm gonna start filing (inaudible) before jury trials then.

THE COURT: I know.

MR. BROWN: That would inspire em (sic) I'm sure (inaudible)

THE COURT: The ah...as to how...as to how it would apply, if you want to go ahead, if you just simply want to proceed on the burden of proof why don't you take off. I'll take under advisement the offer of the ah...of Exhibit A. Go ahead and present your evidence Rick.

DEFENDANT'S EXHIBIT A TAKEN UNDER ADVISEMENT

STATE PRESENTS ITS EVIDENCE

MR. BROWN: I'd like to call Matt Campbell.

THE COURT: Do you solemnly swear the testimony you about to give will be the truth, the whole truth and nothing but the truth sol help you God?

TESTIMONY OF WITNESS #1 - MATT CAMPBELL

DIRECT EXAMINATION

BY: MR. BROWN

MR. CAMPBELL: Yes.

THE COURT: Have a seat.

Q Would you state your name?

A Matt Campbell.

Q And your occupation.

A Corporal Investigator with Rochester City Police Department.

Q How long have you been employed with the Rochester Police Department?

A Ten (10) years.

Q Ah...your current position is what?

A Corp...Corporal Investigator.

Q And on December 13, 2003 were (inaudible) position with the police department?

A Yes.

Q On that day did you receive some contact from the Rochester School District?

A Yes.

Q Who contacted you and what was the nature of that contact?

A Ah...Counselor Patty Keim had contacted me at a ah...another expulsion hearing for another student ah...and said that she had some ah...information from a student that she wanted me to come and talk to.

Q Did she articulate at all or tell you what that information was before you came?

A I believe she told me it was drug information at that point but...that was about it.

Q Okay. Patty Keim...who...what is her position with the school? Who is she?

A She's the Counselor.

STATE'S WITNESS - WITNESS MATT CAMPBELL - (DIRECT)

Q Okay, and you may have just said and I apologize, but, which school?

A At...at Riddle Elementary.

Q Did you go and talk to Mrs. Keim at that point or shortly thereafter?

A In..

MR. BARRETT: Objection, your honor, that's heresy.

MR. BROWN: Whether he went and talked to her or not is heresy?

MR. BARRETT: I thought he asked....

MR. BROWN: My question was whether he went and talked to her.

MR. BARRETT: Okay. I apol...I withdraw.

A Yes I went to talk to her shortly there after.

Q Did you talk to her before you talked to Callie?

A Yes.

Q Okay. What did she relate to you before you talked to Callie?

MR. BARRETT: Objection heresy.

MR. BROWN: Well Judge...

THE COURT: Why...why would that apply...

MR. BARRETT: Callie's not here.

THE COURT: in a hearing like this where the uh...clearly we're not at a trial and I thought that the rules...the evidentiary rules didn't apply in the same fashion that they do here? There's...there's a whole variety of...of uh...not offered for the truth of the matter anyway but I didn't think that heresy objections even applied in a hearing like this?

MR. BARRETT: I know they don't in a...in a sentencing hearing but I...okay.

STATE'S WITNESS - WITNESS MATT CAMPBELL - (DIRECT)

MR. BROWN: Ah Judge I guess...I think the heresy rules apply in the general sense that...you're whole...whole...motion they raised is the evaluation in the information you obtained. I don't know how...if this is about (inaudible) then anything Callie told them is heresy too. (inaudible) got to determine this issue I think it's probably more along the lines of not being offered for the truth, the matter of truth, (inaudible) information he received and whether that information (inaudible) was sufficient to establish probable cause, not that we're proving anything here to just prove it.

THE COURT: Ah...I'll overrule the objection. Ask the question again Rick.

Q What...what was your conversation with Mrs. Keim at the time that you arrived at the school.

A Mrs. Keim said that she ah...had been approached by a student by the name of Callie Richard who had said that ah...she had located a substance to be marijuana on her property where she was living with her parents or father.

Q Were arrangements made to talk to Callie then at the school?

A Yes.

Q Okay, and I assume that was done while you were there?

A Yes ah...I don't remember if it was Mrs. Keim or if she had another ah...secretary maybe go to a classroom or called by intercom ah...for Callie to come to the ah...ah...to the...to the...I don't know if you call it lobby or reception area of the school ah...in which she did and we spoke to her inside of the ah...counselor's office, it would have been. Mrs. Keim's office.

Q Okay. Who all was present when Callie was talking?

A Myself ah...Mrs. Keim ah...Miss...Mrs. Johnson, she's the school principal and ah...and...and Callie.

Q And ah...it is correct that prior to doing this you contacted no parent to obtain consent or permission to talk to Callie, is that correct?

A That's correct.

Q Um...I guess describe a little bit the room where the conversation took place.

A I...it had a ah...ah...ah...a small table or desk, I don't know what you would call it, ah...and another chair ah...and I believe there was a ah...maybe a couch or love seat if you want to call it that. It wasn't...it wasn't a...I mean it wasn't a full size sofa or anything but ah...your typical counselors room, I mean, pretty soft and generic ah...ya know it's not like the principal's office where a kid goes to get disciplined it's ah...she had, ya know, files and pictures and different things in there.

Q If you recall how was everybody arranged in the room, I mean, in talking to Callie?

A I believe I was seated just inside the door, ah...and...and I believe it was one of the small chairs like what the children would sit in um...and ah...and Callie sat on the coach and Mrs. Johnson sat at the other end of the couch and Mrs. Keim...I believe she actually sat on the small table...kind of, I guess, straight across from me.

Q How far apart would everybody be in there?

A Um...I would have had to stand up and...and hand something to Mrs. Johnson if I wanted to...to hand her anything but I think Mrs. Keim and...and...was within arm's reach and so was Callie.

Q With yourself?

A Yes.

Q And I...I assume the principal was within arm's reach being on the couch with (inaudible).

A Yeah...yeah...she...she would have been able to reach Callie but me being caddy cornered like that I don't believe I could of...just handed something to her.

Q How was...describe your interview with Callie. What...what did you say to her, what did she say to you?

A She was very, very ah...I guess up front and frank about what she had seen. She had been in her barn and ah...or barns, I guess, and ah...seen...seen what she believed to be marijuana and ah...ah...talked about how it was wrapped in ah...tarps I believe she called them, and then how she located out by what she called her rabbit cages in a...in a separate barn ah a...she called it a tub or something at that point that was...inside the tub was a ah...camouflage bag, I think she called them duffel bags, I don't remember if that was her term or if she just used bag, but ah...they...they had the same...ah...well...what I referred to as green plant material for court purposes usually, but what she called marijuana was in the...in the...camouflage bag.

Q Did she just refer to this as marijuana, I mean, is that what she said or...

A Yes she used...I believe she used the term marijuana ah...it...it was...I guess normal (inaudible) for her.

Q You indicated in the...ah...in your affidavit that she...some how communicated she'd been around it before. Do you remember what she said about that?

A Yes I asked her if she knew what it was and she said she had been around it

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before when ah...ah people had been to the house and...and Curt and Charla had smoked it with some other friends and I believe...I believe she named them. I don't remember if I wrote down the names or....ah...I...I recall at least one of the names but I don't remember if I wrote it down on my notes on that...that form that I gave you or not.

Q Did she describe specifically or in some specific way where the things were that she had seen?

A She described, other then the barn, she...she described what she located in the barn ah...the upper what she called the loft of the barn ah...and then the rabbit cages, out by the rabbit cages ah...and then in the house she described ah...in the ah...kitchen drawer ah...I believe it was, top drawer, next to the sink, I believe is what she said um...and then ah...she described a ah...a...a...a, I think she called it a secret room, or hidden room, I don't remember which the term was, secret or hidden, ah...room in the basement area that she said she knew where plants had been growing in...in that room.

Q Did she relate to you as to whether she'd seen that recently or not or was that something in the past?

A She...she described, as far as seeing the plants in there, she described the plants as being in the past. She...she currently at that time didn't know if there was any plants in there.

Q Did she identify when she had seen this, the other stuff, like in the barns and that...

A Ah...I believe it was, she said...

THE COURT: I couldn't hear...I couldn't hear you Rick.

Q Did she identify when she had seen (inaudible) in the barn?

A It would have been ah...Friday the ah...I believe it would have been the tenth (10th) after school. I think Friday was the tenth (10th).

Q Well what day of the week was this do you remember?

A Ah...that I was speaking to her? It was the thirteenth (13th), ah...I don't recall what day that was on, what actual day it was.

Q Friday...you said Friday was the tenth (10th).

A I...I...I think. I don't...I don't recall. If was Friday after school. She was waiting to go to her mother's house.

Q It would have been the Friday before you talked to her?

A Yes.

THE COURT: In 2003, October 10 was a Friday, October 13 was a Monday.

Q Was she ah...did you have any trouble articulating this to you or talking to ya about this?

A No she...in fact she was willing to draw the map of ah...or...or...the...the little diagram that she...she drew. She offered to do that to...to help me understand what she was talking about.

MR. BARRETT: Your honor at this point I just want to...there's been a reference to this diagram, which I just saw today for the first time, ah there is a case *Watt v. State*, 412 N.E. 2d ah 90 that says, when the probable cause affidavit is attached ah...when it is attacked by the defendant concerning the lack of probable cause on it's face the State may not introduce other evidence to support it's contention to the probable cause existed at the time. I move to strike

D00173

ah...those two (2) diagrams and that testimony in reference to those diagrams.

MR. BROWN: I haven't offered the diagrams.

MR. ALLEN: (Inaudible)

MR. BARRETT: I thought you submitted the ah...memorandum today, to the Court?

MR. BROWN: I don't have them in the memorandum. I just gave them (inaudible) for discovery (inaudible).

THE COURT: (inaudible)

MR. BARRETT: I thought they were filed with the Court. I would have made a Motion to Strike.

MR. BROWN: (Inaudible).

THE COURT: I've got a...nine (9) page memorandum with no attachments from the State.

MR. BROWN: There are no attachments.

THE COURT: Um...

MR. BARRETT: At least, your honor, he did make a reference to it and it is in support of his finding if there was probable cause. It's outside information on the face of the warrant that Callie made.

THE COURT: Alright. I'll overrule the objection. Go ahead Mr. Brown.

Q Based on ah...(inaudible) basically everything Callie told you (inaudible)pertinent to the marijuana being (inaudible) or being on the property?

A Yeah I believe that would be pret...most of it yes. If there's other small details I don't recall at this point without reviewing.

Q Based upon that did you ah...prepare an affidavit for a search warrant?

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A Yes.

Q Let me show you what's been marked as State's Exhibit 1 and ask if you can identify that (inaudible)?

A Yeah this is the ah...affidavit I ah...prepared for to...to obtain a search warrant.

Q Okay. And ah...did you then present that to Judge Steele in our Superior Court?

A Yes.

Q Let me show you what's marked as State's Exhibit 2 and ask if you can identify it?

A This is the actual search warrant that ah...Judge Steele signed on October 13th at 1:58 p.m.

Q Okay now that particular copy also includes the...I guess I didn't have a blank one, but it includes the return.

A Yes.

Q That part wouldn't have been filled in when the Judge signed it is that right?

A Correct. That would have been filled upon ah...conducting the search warrant.

Q The State would offer State's Exhibit 1and 2.

MR. BARRETT: Defense has no objections.

THE COURT: Show one (1) and two (2) admitted.

STATE'S EXHIBIT NUMBER ONE AND TWO, HAVING BEEN OFFERED, WAS ADMITTED INTO EVIDENCE WITHOUT OBJECTION BY THE DEFENDANT.

MR. BROWN. I don't have any other questions Judge.

THE COURT: Go ahead.

CROSS EXAMINATION

BY: MR. BARRETT

Q Corporal Campbell my names is Matthew Barrett. I'm one of the Richard's Attorneys, I think we have met before at the deposition if you recall. Um...I'm going to ask you to limit you answers to my questions today to yes or no unless indicated otherwise. How did you prepare for todays...

MR. BROWN: Judge I'm going to object to that. I mean he can't ask this witness to do that. He can answer the questions as he sees fit. He's going to permit him to answer (inaudible) allows him to? (inaudible)

THE COURT: I had a hearing one time where we had an angry exchange between a witness and a...an attorney and the attorney finally looked at him and said, "answer the question yes or no, was the light red or was it green", (Laughter) and so the witness looked at him and said, "yes". (Laughter) Ah...we took about a five (5) minute recess then. Ah...obviously an explanation of an answer can be necessary to keep it from being misleading or ah...ah...incomplete and um...the Court will...will not automatically limit the ah...the ability to answer a question. Um...go ahead Matthew.

Q Okay. How did you prepare for today's ah...hearing?

A I reviewed my case.

Q Did you review any of these documents that I filed with this Court regarding the suppression hearing?

A Yes.

Q Okay. When did you review them?

A Today, Thursday, probably Wednesday, probably Tuesday...

Q Okay.

D00176

A Probably Monday of last week.

Q Did you speak with Mr. Brown, the Prosecutor?

A Yes.

Q Okay. Corporal Campbell how long have you been employed with the Rochester Police Department as an officer?

A Ten (10) years.

Q Does the Rochester Police Department have a set of rules and regulations that govern the conduct of an officer?

A Yes.

Q You read the rules and regulations before?

A Pardon.

Q Have you ever read them before?

A I wrote them.

Q You wrote them?

A Yes.

Q Okay. When did you write them?

A About four (4) years ago.

Q You wrote all of them?

A They were in place but I rewrote them.

Q Did the rules and regulations require you to become thoroughly familiar with the rules and regulations as well as with the laws of the State of Indiana that you enforce?

A Yes.

Q Okay. Do the rules and regulations require you to use reasonable diligence at all

times when on duty preventing crime and...and detecting criminal matters?

THE COURT: Couldn't hear you.

A Yes.

Q When you...when you...

THE COURT: Start...start that...start that one again I just got tangled up in the words you were using.

Q Okay. Would you like me to repeat the question?

THE COURT: I would.

A I think the Judge would. (Laughter)

Q It's been a long day your honor. Do rules and regulations require you to use reasonable diligence at all times when on duty in preventing crime and detecting criminal violations?

A Yes.

Q Okay. Do you agree with that requirement?

A Sure.

Q Is it important to use reasonable diligence?

A Yes.

Q Well why is it important?

A To make sure you do your job right.

Q Okay. Have you ever received any form of discipline at the Rochester Police Department?

A Yes.

Q Okay. In your...in your deposition I believe you ah...you told me that you received discipline involving two (2) matters, is that correct?

A That is correct.

MR. BROWN: Judge, I would object to (inaudible) further (inaudible) This is...this is totally...and it's not that I really care that you know what these are, but they are totally irrelevant (inaudible) if he was ah...disciplined for falsifying affidavits or something I could see (inaudible).

MR. BARRETT: Your honor I would say in response to that they are admissible probably on several evidentiary grounds um...I think they're relevant. Um...if I could show them ah...they will show questionable...they question his ability as an officer to be properly trained and I think that's to the very heart of this case in his ability to ascertain a...a credible...a credible ah...heresy declarant so I go...I think it goes to that. I think the State's also, to a certain degree, opened the door here by bolstering his testimony by um...through their ah pleadings by saying that he is...that he had good cause and so I think this is a type of curative admissibility here to show that he was not properly trained and finally I would say that ah...there is a matter that I would like to address for impeachment value in consistent statements, so that would be my response to the State's objection.

MR. BROWN: May I respond your honor?

THE COURT: Mmm-huh.

MR. BROWN: Unless...unless there's an allegation that he in some way provided false information to the Court, his subjective or even objective determination of credibility of Callie is really irrelevant. (Inaudible) other then this issue about whether he interviewed her or not ultimately, the issue is whether the affidavit presented was sufficient facts of the Court to be (inaudible) issued the warrant, it's not if Matt Campbell (inaudible) whether she is found to be

credible where the Court (inaudible).

MR. BARRETT: May...may your honor in response to that, he swore on that affidavit that he had good cause and it's his responsibility to gather, collect that evidence and he swore to that when he presented it to the Judge who, obviously, will make the probable cause determination. I'm saying that this evidence re...revealed that this officer may not be properly trained and that goes to the heart of this case, especially when it's...only took him fifty eight (58) minutes to apply for a...a search warrant. That's what the relevance of this evidence will show, that there are other occasions where he maybe jumped the gun or maybe wasn't doing what he was suppose to do and I think, once again, goes to the heart of this case.

MR. BROWN: There's no evidence that he jumped the gun. I mean, I get back to whether the affidavit was, no matter how quickly he prepared it, it goes back to how (inaudible). It's kind of a continuation of (inaudible) assume a warrant and then...apparently we're now assuming that he did something...he jumped the gun. There's no evidence (inaudible).

MR. BARRETT: He...he did not investigate...

THE COURT: Wup...wup.

MR. BARRETT: Sorry.

THE COURT: I got lost as to why I cared why he was disciplined a few years ago. I got...I got lost on that and I'm going to make you do it again, but I will say that if you've got evidence that he's lying to you when he answers he's been disciplined twice, that we can go there, obviously, but...

MR. BROWN: I don't disagree with even that but...I don't think we're

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going there.

THE COURT: I can't hear you Rick.

MR. BROWN: I don't disagree with even...even that but I don't think we're going there. (Inaudible) and then impeach him on it.

MR. BARRETT: It's consistent statement.

THE COURT: Why do I care whether he's been disciplined in the past?

MR. BARRETT: The disci...the type of discipline that he was disciplined for ah...I probably shouldn't say because it hasn't been admitted yet, will questioo his ability to investigate and it questions his ability as a training of an officer. It's in the very heart of this case. Um...his ability to collect evidence, to make sure that this eight (8) year old child was credible, it...it...shows an adverse light against that ah...again there's also a piece of evidence I would like introduced that he...I...it goes to being inconsistent with what he testified under oath any after he had a chance to review his deposition made no corrections to it. Left it out, and it's an impeachable um...situation if he's not being truthful or maybe if he's hiding something here maybe he's not being truthful in this case so...I really can't introduce that piece of evidence with...there's three (3) instances, your honor, that I'd like introduced and I've given them...I've given them to the State and revealed it to them um...I can't introduce the first two (2) without...the third piece is the one that I would like to use as impeachment material and again all three (3) pieces of...all three (3) instances of misconduct go to his training. To his ability, to ascertain whether this child is credible or not. He swore...he swore in the affidavit that it was good cause.

THE COURT: What I'm going to do is...is conditionally um...allow you

to proceed but you're gonna have to tie this in to...you're gonna have to tie this in as to what happened in the presentation to the Court that makes this suspect.

MR. BARRETT: The first...

THE COURT: Go ahead...go ahead.

MR. BARRETT: I would say this your honor...

THE COURT: Dat.....

MR. BROWN: Since he's raised the whole issue here, your honor, he's now saying that he's apparently said something in his deposition that he wants to impeach him..

MR. BARRETT: Yes.

MR. BROWN: And that is purely (inaudible). You can not ask him something that's estranged to the case and then impeach...impeach him on it. You can't...if they're not entitled to prove this in their case and chief then it's estranged for (inaudible) impeach and so you'd have to do something about his general physical area of strength and I don't know...I don't even know what they're talking about but they disagree with something or he misstated something, you can't impeach him on that. You have to except his answer under that rule when it doesn't have some...when it doesn't pertain to the case, and I...I continue to object to even that one. That's an even less valid reason.

THE COURT: I'm going to...I'm going to conditionally overrule the objection although I'll review that if this clearly isn't going anywhere that's relevant. Go ahead with your questions.

MR. BARRETT: Okay. I would say this your honor. The third piece of evidence I'm going to introduce is the impeachable evidence. May I approach the

witness?

THE COURT: Mm-huh.

Q (inaudible). Corporal Campbell is this the matter that you refer to in the deposition and claimed occurred in 2002?

A I guess I don't understand your question.

Q I asked you in your deposition if you'd ever been disciplined as an officer and you said ah...the first inci...well the most recent one, you said, was in 2002 and this document here is a disciplinary report dated 2002, is this what you were referring to in your deposition?

A Yes.

Q I didn't have the opportunity at the time to show this to you in your deposition because I didn't have it so that's why I'm asking you today.

A That's okay, yeah it's...sure yeah.

Q Okay. Here you were found...you were found to have engaged in conduct unbecoming to an officer which also states you acknowledged it, is that correct?

A Yes.

Q You were suspended for one (1) day without pay and you made some inappropriate verbal outbursts against another officer right?

A Correct.

Q Okay. You also received a written warning for your failure to respond to an emergency situation. Correct?

A Well that's the same...same thing.

Q Right.

A Same disciplinary action.

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Q Okay. Your honor I have a...a second incident which I would want to introduce as evidence if I may approach.

THE COURT: Okay.

Q This is Defendant's Exhibit G. Now you also, when I asked you if you'd been disciplined for anything else, you said, there was another matter prior to the last one. Um...you said it happened a couple years before that. Is this what you were referring to?

A Yes.

Q Okay. This matter involved, I'm not sure what the facts are exactly, you removing your shirt and then reproaching an individual, is that correct?

A Off duty yes.

Q Can you kind of tell be about what happened?

MR. BROWN: Judge I'm going to object to that one. I mean, he's making no attempt to...to tie this in any fashion...

THE COURT: How does...how does this relate to Callie?

MR. BARRETT: Your honor it's conduct um...unbecoming, I mean, it goes to the fact that um...again, questionable training, questionable ability to ascertain um...you know, whether or not she's credible witness. This is the last piece that will address that. The next one will be impeachment. I just wanted to know, to be fair to the officer, what the ah...background facts were. It does say that he was doing something inappropriate here ah...when confronting a subject ah...this Bud Lee, could be applied in the case when he's approaching Callie with the presence of two (2) other adults. He's doing something inappropriate to a citizen. Very real.

STATE'S WITNESS - WITNESS #1 MATT CAMPBELL - CROSS

THE COURT: Tell...tell you what. As soon as you tie some behavior of his into the way he approached Callie or sought the warrant, we'll go back to this, but in the meantime you've truly lost me as to how this is...this matters.

MR. BARRETT: The only thing is...

THE COURT: About anything. You've not told me anything about his training and you seem to be ah subjectively attacking his character at a time where everything, all the bright line tests that I'm to use are objective tests.

MR. BARRETT: Your honor this is foundation. I will...I understand I'm asking for some leeway here but I will continue in my cross here. This is foundation material um...in addition to the rest of my questions.

THE COURT: I'm going to sustain Mr. Brown's objections on the line. This is ah...I can't conceive of how this is tied to anything that will remotely matter in the case. If you want to make an offer to prove, you go ahead.

MR. BARRETT: I would.

THE COURT: But this...go ahead.

OFFER TO PROVE

MR. BARRETT: I would like to make an offer to prove your honor. Again, if I...if I had the ability to question Corporal Campbell I would show that this ah...shows adverse light on his ability again to ascertain a credible witness. It reflects totally, it does to the very heart of this case on his training as an officer, which I will again address here later on. His statutory duty, to collaborate information, his duty ah...that is required by his rules and regulations of the Rochester Police Department to investigate matters properly and that's what I would offer to the Court as a matter of proof here.

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THE COURT: Go ahead with your next line of questions.

MR. BARRETT: Your honor my final one, just for clarifica...clarification from the Court, is a final disciplinary matter. I'm not offering it for any substance of purpose but for strictly inconsistent impeachment purposes, if I can, and I will show the Court.

THE COURT: Go ahead with your line of questioning.

Q Okay. This is Defendant's Exhibit H. During your deposition, Corporal, I asked you if there were any other instances of discipline besides these two (2) that we've addressed today and you said no. Is that true?

A I believe so, yes.

Q Okay. I then asked you at the end of the deposition if you would like to add anything and you said no. Do you remember saying that?

A Ah...I don't recall but if you say it's in there then I'll...I'll concede to that.

Q I have a copy of your deposition, would you like to just have a reference to be fair to you today?

A Ah...if...if it's in there, it's in there I'm sure.

Q Okay so you would agree with me?

A Sure, if there's anything I wanted to add? At that time probably not.

Q Okay. I asked you if you had been truthful in all your responses and you said yes. Do you remember saying that?

A Yes.

Q Okay. You were then provided time to review your deposition transcript and make corrections, correct?

A Yes.

Q In fact you made some minor corrections, right?

A Probably so, some spellings and ...

Q Spellings and...

A Yeah.

Q Okay. But you really weren't being truthful with me because there was another disciplinary report, wasn't there?

A Ah...report?

Q Or something?

A There was no disciplinary action on this, no. As it states is says it's possible charges and ah...there was no...there was no disciplinary action.

Q But it was placed in your disciplinary file, correct?

A Ah, obviously if you have it, yes it was.

Q Okay. To the matter at hand, Callie Richard did not personally contact you and request to speak with you at Riddle Middle School did she?

A Correct.

Q When you contacted Ms. Keim, the school counselor, you did not take any investigative steps into this matter prior to your arrival at the school?

A Nope.

Q Okay. You arrived at the school at about one (1:00) p.m. on October 13th?

A Approximately yeah.

Q Okay. You testified in your deposition that you nor any other officer ever spoke with Callie about any of these matters prior to your arrival at the school, correct?

A I know I didn't. I'm assuming no other officers did, I don't know why they would have.

Q Okay. Interviewing Callie was the first step with regard to this investigation? The first step?

A Yes.

Q She was eight (8) years old and in third grade at the time. Would you agree?

A I believe that's correct.

Q You questioned Callie at the school in a room with the principal and the school counselor who were also present, correct?

A Yes.

Q Okay. Now you testified in your deposition that you did not give Callie any Miranda warnings, nor did you obtain permission from Callie's parents before you questioned her, correct?

A Correct.

Q At the time you questioned Callie you knew that there was an on going paternity suit between defendant Carl Richard and his ex-wife Carmen Richard, correct?

A And Charlie.

Q Okay, and I believe you agreed in your deposition that it was entirely possible that Carmen Richard or someone else could have told Callie to make these allegations against her father in order to spite him. Right?

A Wrong.

Q You didn't say that?

A No I didn't.

Q I mean...maybe you didn't say it but you agreed with me, correct?

A I didn't agree that it was entirely possible.

Q I think you said, anything's possible.

A I did say, anything was possible, I did not say it was entirely possible nor did I agree that it was entirely impossible. I said, anything is possible.

Q Well...anything is possible. Suppose that were you...when I asked you this question you said it was possible, correct?

A You asked if it was possible and I stated anything is possible.

Q Okay. So you had some doubts, correct?

A As to what?

Q As to whether Carmen Richard or someone else could have told Callie to make these allegations.

A I didn't even consider it.

Q But you said it was...anything's possible.

A When you asked me, sure it is. Anything's possible.

Q Okay. What I'm trying to say is, and let me clarify, I'm not trying to trip you up Corporal, if it wasn't possible you would have at least probably indicated to me that, no, it was not possible.

A At the time you asked, anything is possible. I didn't consider it when I filed for the affidavit. You asked me if it was possible I stated it was.

Q Okay. Thank you. Now you also agreed in deposition that it was possible that the substance in the barn, that Callie allegedly referred to as marijuana, could have been hay, straw, corn stalks or some other type of plant material, correct?

A I believe in general I stated, anything was possible, again.

Q Again, anything was...anything is possible, but you said it was possible.

A Anything is possible.

Q But it was possible?

D0018!

A Anything is possible.

Q You further agreed in your deposition that Callie could have been mistaken with regard to the identification of the substance alleged to be marijuana. I think you said anything's possible.

A Anything is possible.

Q Anything is possible but if it wasn't you would have at least indicated to me in my...in your deposition that, no there was no way that could have happened, correct?

A At the time you asked me the question, I answered it. Anything is possible.

Q It's possible, okay. And I think you've said, again, you agree, in your deposition, that children eight (8) to nine (9) years of age or younger, like Callie, often have tendencies to fabricate things and tell imaginative stories. Another anything was possible. Was that...was that your answer?

A No.

Q What was your answer?

A I disagree with that.

Q You didn't agree with that?

A I believe you asked me, in generally speaking, if that...if they tend to ah...tell imaginative stories or something to that effect ah...more often then tell the truth and I said, no generally speaking I believe they tell the truth more. You need to look a few more lines back in the deposition.

Q Please take a moment, your honor, um...it's on page seventeen (17) and I will show this to the witness if he so desires it. Page seventeen (17) line fifteen (15). Yeah I've got seventeen (17) too. Yeah. The line six the question. Line six,

"generally speaking do children, say eight (8) to nine (9), ten (10) years of age or younger always tell the truth when you...when you, you know, talk with them about a case or something", and your answer was, "I guess generally speaking". Question, "yes generally speaking". Answer, "I would say generally speaking, most of the time. Most of the time yes they do". Question, "okay, do they ever, have they ever had a tendency to fabricate things when you have spoke with them, you later find out may...or maybe go off on an imagina...imaginated, you know, imaginative story or something like that" and you said, "sure". So you're changing your testimony today then? Cause you just...

A No I believe you just stated exactly what I said, it...it...in generally speaking I would say most of the time they do, yes, they tell the truth. That was your question.

Q Okay. Line twelve (12) I said, do they...then I tried to clarify that and narrow it down and I said um..."ya know, do they have tendencies to fabricate things" and...

MR. BROWN: No, no, no, no, we're not gonna just re...rewrite the question. Your question was..

MR. BARRETT: I'm not rewriting the question.

MR. BROWN: ...have they ever had a tendency to fabricate, that was your question.

Q Okay. That's what I said and then you said, sure. How...what...

A Do you have children? Do your kids ever lie to you and fabricate?

Q I'm not answering your questions today, your honor, I move to strike that. I'm asking you a question. You said, sure.

A I have a three (3) year old that...that tends to fabricate to me.

Q Your honor there's not a question before this witness I just...do you agree is that what you said or not?

THE COURT: I thought it was responsive.

A Pardon.

THE COURT: Ah he moved to strike your answer, I thought it was a responsive answer.

Q Okay. Well my...my...

THE COURT: Deny the mo...

Q ..specific question to you is when I asked you um...if you agreed with me on that, line twelve (12) I said, do they ever have...have they ever had a tendency to fabricate things, and you...your answer was ultimately, sure.

A Do kids ever lie to me, is that what you're asking?

Q Yes.

A Yes.

Q Okay. Thank you very much. You testified in your deposition that Callie was qualified to identify the substance alleged to be marijuana based on, I believe your quote was, numerous rumors that you heard about ah...concerning the Richard's farm. Is that correct?

MR. BROWN: To this I'm going to object Judge because, again, I don't care if he relates it but...this is just an example of...he asked him about things in the deposition...he is not talking about where he resided (inaudible) the time, I mean, this is why I objected to the deposition (inaudible) included evidence . if...there's all kinds of things that I asked in my discovery though.

MR. BARRETT: Your honor, this is the very heart of this case. Of course...

THE COURT: Yeah and something else was the heart of the case a minute ago.

MR. BARRETT: Your honor, well it's all the same. What I'm asking here your honor, was she qualified? Was she...

THE COURT: Back...back up for a minute. I truly didn't hear the question well.

MR. BARRETT: Okay.

THE COURT: You're gonna have...re...if you...if you could go back...

MR. BARRETT: I apologize.

THE COURT: ...and do...do what the topic is at least and who are the...

MR. BARRETT: Okay.

THE COURT: ...or the question again if you could.

Q I'll reread the question, your honor. I do apologize. I said, you testified in your deposition that Callie was qualified to identify the substance alleged to be marijuana based on numerous rumors that you heard concerning the Richard's Farm. Now that goes to her credibility. Rumors? These are subjective questions.

MR. BROWN: This is a sequence Judge and questions in a deposition as to asking Officer Campbell, why do you think she was qualified, and he said a couple other things, as I recall, before this and he finally says, are there any other reasons and Matt said, well (inaudible) rumors, and this is the setting to do this. This is...just read the questions in the deposition.

MR. BARRETT: Your honor I asked for the underline basis of how she

was qual...

MR. BROWN: When I finished my statement of just a few minutes ago, he said, to you, that these kind of details, when I was asking the questions, won't have anything to do with this issue. We can't go behind the affidavit. We can't go behind that information as to what he was saying. It doesn't matter why he thought she was credible. Even if it is based on (inaudible), it doesn't matter. Why...why Matt Campbell thought she was credible.

MR. BARRETT: The statute, your honor, requires a credible witness. It does require credible witness. I was wanting to know how he knew she was credible. The underlined basis for that. It's his job to at least present a credible witness to a Judge.

MR. BROWN: I don't deny that Judge. We're...we spend more time...just...just ask him your questions. We've spent more time arguing about it. I don't...I don't want to create the impression that I don't want you to hear this, I just think it's a waste of time and we've already wasted more time then I've tried to save so just ask him the question and identify where you're asking from too.

MR. BARRETT: I'm on deposition at page thirty (30) lines twenty two (22) through twenty five (25).

THE COURT: Let's go ahead.

Q Okay. You testify to that? Correct? (Laughter) Okay, let me ask the question again.

MR. BROWN: Do you have a deposition?

A I don't have a deposition.

Q Yeah why don't we give it to him. Let me ask you this again. Corporal

Campbell you have a deposition in your hand on page thirty (30), lines twenty two (22) through twenty five (25), you see where I am?

A I do see where you are.

Q Okay. Now your answer, that's...that's the answer. You said you were relying on history and then on line twenty three (23) you referenced numerous rumors. Do you see where I am?

A Yes.

Q Do you still stand by that today?

MR. BROWN: I guess I...I don't know what that question means Judge.

MR. BARRETT: Well do you...

MR. BROWN: The only reason in respect to the witness, did he stand by what today. He's not identifying the question of the answer he's just identified the answer completely out of context (inaudible) and asks him if he stands by it..

MR. BARRETT: Your honor...Your honor I just asked the witness if he testified to that based on what...how she was qualified that he was relying on numerous rumors, that is the question. I just asked if that's what he testified to.

THE COURT: I'll overrule the objection. Answer it as best you can.

A Can you repeat it?

Q Sure. You testified in your deposition that Callie was qualified to identify the substance alleged to be marijuana based on these numerous rumors that you heard concerning the Richards Farm, correct?

A On page twenty nine (29), line sixteen (16), you asked the question ah...well the statement says that she knows what it is because she's been around it before.. That's what I based it on. And as the Prosecutor stated, you have further

asking...further questions about any other information and that's when I told you about rumors and stories and whatever else it might say.

Q On page thirty (30)?

A Pardon.

Q You said you were relying on numerous rumors on page thirty (30), is that what you're referencing?

A Ah...that's not what I was relying on, you asked if there was any other information that ah...

Q Okay.

A ..and that...that I stated yes there were other numerous rumors and...

Q Okay.

A ...other information....that I relied on. She know what it is because she'd been around it before.

Q You were also present inside the Richards house as a wedding guest nearly one (1) year before you questioned Callie, is that correct?

A Approximately yeah. I don't know the exact date.

Q Okay. Your wife Rebecca and Charla Richard, were they best friends about this time when you were questioning her?

A It's pretty tough to say they were or weren't. Ah...I believe...I believe in your ah memorandum they said...it stated that they are best friends which is...that's, ya know what do you call best friends anymore? I..I..I...at this point I'd have to say no, I'd have to say I'm her best friend but ah...ya know, I don't...

Q I mean at the time.

A Do they have contact? They don't have much contact. Does she ever call? Yes.

Do they ever talk? Yes.

Q At the time...

A Are they best friends? I'd...I'd just have to say I...I...I would have to say no.

Q How about at the time that you drafted the warrant...or the probable cause affidavit?

A Were they best friends? No. Did they have, ya know, contact still? Yes. It's...it's very difficult to say that they were...were best...that they were best friends at that time, and I believe at that time I gave my deposition that I'd stated that they were best friends ah...through high school and...so on, so forth.

Q Okay. Now at the school you questioned Callie for about fifteen (15) to twenty (20) minutes and then you drove to your department to prepare the affidavit, correct?

A Yes.

Q Okay. And you testified that the information that Callie allegedly gave to you during your questioning was used as a sole basis of your affidavit, correct?

A Yes.

Q And you further testified that you did not take any further investigative steps with regard to the information that Callie provided you before you obtained the warrant, correct?

A Well I think I...I might have said something about a...ah...possible obtaining an aerial photograph, I'm not sure at what point I'd done that.

Q Okay, but I think you testified that you didn't take any further investigative steps?

A Well, it could have been, I'm just saying that I...I...I obtained an aerial photograph, I don't remember at what point that I did that.

Q Okay. I think you did say at one point that you could have done a knock and talk. What is that?

A Well you...you go to the door and ask the ah...the...the...the resident or home owner or whatever you want to call it that, hey we've got some information can we search your house basically.

Q Okay. But you didn't do that?

A Well no.

Q And you didn't have any further contact with Callie after you left the school and applied for the search warrant, correct?

A Correct.

Q The Judge signed a warrant about one fifty eight (1:58) on the same day?

A I believe that's correct, yes.

Q Okay, and it was about fifty eight (58) minutes after you initially spoke with Callie?

A Yes.

Q Okay. Could you just answer to me, when you signed your affidavit you swore to the warrant issuing Judge that you had good cause, I think that's referenced on paragraph two (2), could you just tell me what, in your words, what were the objective facts, the proof of your reasonable diligence in making sure that this eight (8) year old was either credible or that she was supplying you information which was corroborated or not corroborated?

MR. BROWN: Judge that's an ultimate (inaudible) question.

MR. BARRETT: Well let me cut it up.

MR. BROWN: I'm going to object on that on the grounds that it's...

STATE'S WITNESS - WITNESS #1 MATT CAMPBELL - CROSS

Q What were your objective facts, that you were relying on, to make Callie Richard, an eight (8) year old girl, a credible, heresy witness? Declarant?

A She lives in the house.

Q Okay.

A And she found marijuana on her property.

Q What? Okay, she lives in her house. That proves that she lives there but what...what makes her truthful? What makes her a truthful person? What were your objective facts?

A She gave me description, she...she...drew a map ah...she told me where things were, she knew about the hidden room...

Q You knew...

A ...gave me a diagram. I've never been in the hidden room.

Q Well that's...

A Ya know, if you want to refer to...to...no I've never...I've been in their basement, I believe I've been in their upstairs ah...I've never been to their hidden room.

Q Okay. Well she...she can describe the layout of her house but what makes her truthful, an eight (8) year old, a third grader? What makes a child like that truthful...

A Well like I said before, ya know, children tend to...you usually have...

Q what were your raw facts?

MR. BROWN: (inaudible) Now wait a minute I'm going to object. This is just argumentative.

A Sorry.

MR. BROWN: It's not up to him to determine whether it's truthful or

credible it's the...that's the information that the...the Judge makes that choice.

MR. BARRETT: Your honor, he signed an affidavit saying he had good cause. Good cause means objective facts.

MR. BROWN: Yeah he had an affidavit that says that he believes there is probable cause to search based upon the following facts and those are in the affidavit. The affidavit either stands alone or (inaudible) not. He's put in the affidavit, in fact, that it says he believes he provided probable cause.

MR. BARRETT: Your honor I'm just asking for clarification of his aff...of his affidavit.

MR. BROWN: And I thought he couldn't go beyond the warrant. That was an objection you made a while ago and I think it's a valid...

MR. BARRETT: Well I'm...

MR. BROWN: (inaudible)

MR. BARRETT: What I'm asking him what in this affidavit then was objective.

THE COURT: Um...I think you're entitled to ask the question, although, it occurs to me that you ah...interrupted him during his answer and argued with him as to whether or not you thought the things that he was relying on as credible...whether you thought they were credible. Um...I don't know that he ever got a chance to finish his answer on that. Ah...thus far um...the things that ah...the two (2) things he has said thus far, I think, were that ah...she stated there were things in the house and that she had found marijuana um...there's reference to a hidden room and um...ah I'll overrule the objection if you want to go ahead and ask him along those lines, what he thought was credible in there, you're

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entitled to do that.

Q Okay your honor. Corporal Campbell what made you think that the fact that she could describe the layout of her house made her credible?

A Well one that she knew about the hidden room uh...I...it...I think, as the Judge may have stated uh..., I think one of them was that she actually lived in the house uh...that she found marijuana on, the property, uh...and as I stated earlier in my deposition that uh...children of that age usually have a tendency to tell the truth more then they do lie and tell imaginative stories. So...I had no reason not to believe her.

Q How was she qualified to make the determination that this was...the substance was marijuana?

A I think as I stated earlier in my deposition that she said she'd been around it before when...the...the defendants were smoking it and...just knew what it was. When you grow up around it you just kind of have a tendency to know what it is.

Q Your affidavit doesn't say that they were smoking it, it just simply says...

A I know, I didn't say affidavit I said deposition.

Q Okay, but the Judge relied on the affidavit.

MR. BROWN: (inaudible)

MR. BARRETT: Well I'm trying to clarify the sentence here that she states...

MR. BROWN: Well you asked him what he believes, ya know, you can't have it both ways. You asked him why she believes he's credible now you want to limit him to the affidavit.

MR. BARRETT: I'm not limiting him I'm just asking him...how was she

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qualified because she'd been around it before? What made her qualified at the time that she was around it before?

THE COURT: Hmmmppp? I got...I got lost in there. Say it again.

MR. BARRETT: She's an eight (8) year old, I mean, how...you said she's qualified because she's been around it before but how do you know that she's...it was marijuana when she...when it was around before?

MR. BROWN: Judge this is just argumentative. This is just arguing.

MR. BARRETT: I'm just asking how he knew she was qualified.

MR. BROWN: He's answered (inaudible)...

THE COURT: I'll...I'll sustain the objection. Argumentative question. If that's what he relied on, it's what he relied on.

MR. BARRETT: Okay.

THE COURT: Argue with him if you want, but that's arguing.

Q The statute also require you to ah...to collaborate um...information received from a heresy declarant, and I believe you agreed with me earlier ah...that your rules and regulations require you to take reasonable diligence, now, you just testified that you didn't...you didn't ah...this was a first step towards this investigation when you met with her and that you didn't do anything afterwards, but before you applied for the warrant so how did you corroborate any of this information that she was giving you? You understand what I...I mean how did you...

A No I guess I don't understand your question.

Q Well how did you...what steps did you take to verify that maybe this eight (8) year old was telling the truth?

A I had no reason not to believe her at the time.

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STATE'S WITNESS - WITNESS #1 MATT CAMPBELL - CROSS

Q At the time that you spoke with her at the school?

A Yes.

Q Okay. Do you think you had a duty to at least corroborate something?

A The only way to corroborate it was to go to the...the residence and find the marijuana that she was there. In which we did.

Q Okay. So you absolutely did nothing after you spoke with Callie Richard? Right?

A I prepared an affidavit, took it to the Judge, got a search warrant and went and found the marijuana.

Q Okay. I don't have anything further your honor. Thank you Corporal.

THE COURT: Anything else Rick?

MR. BROWN: No.

MR. CAMPBELL: Would you like your stuff back?

THE COURT: You can step down.

WITNESS EXCUSED

MR. BROWN: I have no other evidence Judge.

THE COURT: Do you have any evidence to present Matt?

MR. BARRETT: I'm sorry your Honor, I didn't hear you.

THE COURT: Any evidence to present?

MR. BARRETT: Nothing beyond what I've already submitted with my memorandum.

THE COURT: Closing arguments Mr. Brown.

CLOSING ARGUMENT

BY: MR. BROWN

MR. BROWN: Judge I...I don't want to repeat everything I just want to reiterate and I wanted Matt to testify before you because I think it's easier (inaudible) for you to hear the testimony then just trying to read it in the discovery deposition and...that is where we ended up. Judge we haven't had a ruling on that yet, but...um...I think hearing the testimony on seeing the situation that it was clear, or it should be clear that the...that Officer Campbell is under no obligation to implement the safeguards (inaudible) juvenile waiver of rights statute is...is...that statute simply does not apply to that situation, does not apply to uh...it only applies to situations where the child is waiving some kind of right and Callie was waiving no right. This is the thing they are...they are attempting to inject (inaudible) Callie's position to prevent their own incrimination. That's the offensive thing about this. They're saying that before an officer can talk to a child, as a witness, they have to call the parent or get the parents consent. They don't bother to mention the fact that Carl couldn't have been the person in this case even if they're...even if they're right, the statute prevents uh...that the waiver would be invalid if the parent has a...uh...average interest of the child which would certainly be the case here. You don't want to evoke that part of the statute I guess, but the statute doesn't apply because Callie was not waiving any rights. She simply was not waiving any rights anymore then you would be waiving any rights if an officer walked up to you on the street and said, did you see a white car just go through here at a high rate of speed, or if you walked up to a juvenile and said that. He's seeking information, he's not asking for the person to incriminate himself. A right that you're waiving at that point but the juvenile waiving is the

right against self incrimination. Callie was not incriminating herself. Callie is a witness providing information to the police. What they want to do is (inaudible) to, Callie can't incriminate her parents without their consent. It doesn't work that way. It would be no different then if you had to ask the guy who's molesting you as a child if you...*if* they mind you talking to that child. Do you mind we if talk to your child about the fact that you molested her...would you give us consent? Investigations are not required to do that and there is no...again, they've sited no case, there is no case that requires the officer to do that in this context. They site lots of cases that say you have to do it but they're all in the context of a juvenile being a suspect, the juvenile being accused of a crime, or a juvenile getting ready to make incrim...or having made incriminating statements, and you do have a right against self incrimination and to remain silent and to have your parents there under those circumstances where your rights are at stake. Callie's was...Callie's rights were not at stake, that's just a total ah...total red herring to inject that statute into this interrogation that has no application. And secondly, she is under Indiana Law, as far as the affidavits concerned that's probably the only legitimate...semi legitimate question on this case is whether the affidavit was...was ah...adequate and under Indiana Law, and I'm not going to read my memorandum, but under Indiana Law she's presumed to be a credible witness. Their case...a case they site it says, you either have to have the credible witness or if it's not a...a person who meets the category of a credible witness then you've got to establish their credibility by...one of the ways you can do that is through corroboration. Ah...she is presumed to be a credible witness under Indiana Law. You don't have to corroborate a credible witness. Um...(inaudible) cause I want to emphasize it. Under the same scenario, the same issue that a Court in, *Houser*

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v. *State*, the case the defendant's sited and I...I have too, the only real question here...intended is whether, as the warrant statute required, number one (1), White was a...I think that's his name, White was a credible source or two (2), his heresy statements were corroborative by surrounding the circumstances describing the affidavit even if sufficient under the statute. Either was sufficient. So she's credible, you don't have to corroborate. If she's not in a category of a credible witness then you've got to do something to establish her credibility and ninety nine (99) times out of a hundred (100) that's going to be corroboration. The...the way you do it. Ah...so that's corroboration, just again, kind of a red herring....throw these crystals in that apply to confidential informants or anonymous informers and they simply don't apply to her. They don't apply to a...an identified, uninvolved witness. This is not a hired informant ah...you can have identified informants who are still in this category when they're working for the police or working on charges or their, ya know, their...their...the kind of informants, the people we think of as informants, but when you just have a person who is giving information, that person is presumed credible. When they're identified and there's the...the situation is identified, how they gave you information, what it is and ah...I mean you don't have to corroborate. Her information is inherently credible. Number one (1), she told...this wasn't ah... Matt Campbell going out to the school or seeing Callie on the street and asking her, hey what do you know about your folks? Have you ever seen anything unusual, ya know. She went to a school counselor. I think number one (1) that is one of the biggest ambitions of her life, where the credible appears, she, oh her own, went to the school counselor. A person you'd go to when you have a problem. You have something that concerns you. If something's upsetting you,

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whatever the case may be, you go to the counselor and she went to the counselor. She didn't go to the police. The counselor called and Officer Campbell went and talked to her and she readily told Officer Campbell what she had seen and, as I said earlier, that information was...is almost self corroborative in it's...in it's self. The way she...she described the material, what it's in, where it's located and particularly then in the secret ah...or hidden, whichever word she used, hidden room, in the house where it's growing. Ah...there's pretty much only one thing you'd grow in a hidden or secret rooms in the house. At least in Indiana. People might have greenhouses and they might grow things but they don't have them in secret rooms, ya know, you don't grow your potatoes in secret rooms. So those...all that information combined, and it is a totality of the circumstances standard in Indiana, you know, even under a statute it's a totality of the circumstances. (Inaudible)Magistrate, it's the way to consense (sic) determination based on the totality of the circumstances and there is a fair probability that the particular thing contains evidence (inaudible), and I don't think you can come to any other conclusion when you read the affidavit and the information it contains and the...it identifies who she is, it identifies how she knows the information and it identifies exactly what she has observed. What she observed corroborates her identification of this marijuana and she is a consumed (sic)...she is presumed to be a credible witness and that's pretty much the end of the inquiry. It's clearly, and they don't dispute to the affidavit itself, it's the facts contained in it. I...I've not yet seen ah...anything that leads me to believe that even the defendant's dispute, that is probable cause. In other words if it's a credible source ah...the information does establish probable cause. I know I heard that (inaudible), but once she's determined a credible (inaudible) and she is this

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credible, that's the end of the inquiry because it clearly establishes probable cause at that point. The warrant was validly issued. Now we've not talked about, and I haven't talked about it in my...in my memorandum, I'm not prepared to prepare a new argument right now, but you also have the situation...even if, for some reason you thought this was a close case, um...the officer had the right to (inaudible) warrant, ah...the principle just escaped...I was starting to say it and it went out of my mind...the ah...he has the right to...reasonably rely on one but I can't think of the phrase, but, the only time you're not entitled to do that, I think there's some cases sited in the defense memorandum, that...that talk about them, although it's not rightly sited, um...the only time you're entitled to, or not entitled to rely on that...that principle, which name escapes me, is if you have mislead the Court...the officer has knowingly done something to mislead the Court or the officer or that a reasonable person wouldn't know...that any reasonable person would know that the affidavit was insufficient, something...something...standard like that, that you can't...it's a good faith exception, that's what it ah...good faith exception ah...when an officer's entitled to provide a warrant that the Judge approves basically unless the officer has mislead the Judge and I...I don't know how you can get past that even if you thought something wasn't quite right in this I guess I can't comprehend why...clearly this was done in good faith, he provided the information to the Court, the information itself, (inaudible) and he would be entitled to rely on that in good faith when executing the warrant, searching the property. So there's multiply ways that (inaudible) but I think, above all, there is just no basis to invalidate the warrant or the process by which it's detained and that...that evidence should not be suppressed.

THE COURT: Go ahead Matt.

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CLOSING ARGUMENT

BY: MR. BARRETT

MR. BARRETT: Your honor, I would...I would say this and I would like to clarity what the State has said. I have not intentionally set out to mistake the law regarding the waiver statute. Um...that, I admitted, there is no case law on that and it really is primarily involving children. Their rights as juveniles. It's not a dispositive issue in this case. If it...if the Court rules on it, it won't...I think, really affect the probable cause affidavit. The credibility and corroboration which we're, we're going back and forth on here but, I think it's an additional consideration. I think it's an exploitation of illegal conduct. Prior legal conduct. Um...Callie's rights were somewhat affected to this. In either way. She's...ah there was a CHINS proceeding initiated. Um...I think at least you could say the power to include someone is the power to exclude someone, and they...the parents do have some...a right, a special relationship here with the child as it applies to the statute. The Indiana Supreme Court has recognized that ah...a child's relationship with their parents is special. This is not like ah...Carl Richards friend. This is his child. Um...there is some case law, though, on this issue. Seventh (7th) Circuit I believe on page nine that I site in my memorandum stated that a third party whose rights have been ah...unlawfully violated, their fifth amendment rights, can prejudice a defendant's right to a fair trial. I think that principle is applicable in this case. Um...again I think it was an exploitation of an illegal act, although it's not totally dispositive in this case, so I think it's a consideration that weighs heavy in favor of granting this motion to suppress. As to the two ah...alternate prongs here of the probable cause affidavit, the credibility and the corroboration, I would first say that, there was no corroboration at this

point. Um...no investigating before Corporal Campbell arrived, no investigating afterwards. Got it all done in fifty eight (58) minutes. Um...the rules and regulations of his department say he must...he must diligently investigate matters at all times and, ya know, there was no corroboration sho. I don't even think that's an issue. I think we're...we're tied up here on the credibility prong. Um...I do...I do challenge this probable cause affidavit, your honor. There is no probable cause. The only that establishes is that she lived there, she knows the location of certain places, room in her house. Um...credibility. Credibility. That means more then just pointing out the locations of places. That means, is this person a truthful individual. Look at the totality of facts, you have sh...an officer responding sh...here at the school. Callie never called officer up. He never...there was no allegation here at all that she contacted him. This is through a third party, if that's even believable, so this is not in the spirit of a concerned citizen, which I believe, and I have not had the opportunity to review the cases Mr. Brown's siting to, this is not where Callie independently approached. We're going on a third individual here, through Callie, so this is not in the spirit of a concerned citizen. So that's very suspect. So she is not presumed to be credible. She was asked about these questions in a room with three (3) adults. She's eight (8) years old and third grade. There are three (3) adults in here. All three (3) were authority type figures, from her perspective. I think we're losing that in here. We don't even know the type of...we can only speculate the type of...of...of leading questions that were asked. We have a counselor, we have a principal and we have a law enforcement officer asking her these questions. Siting very close to her in some cases. Again back to credibility. Um...I mean, these allegations in here that she knew what it was because she it before and she...she believed it to be

marijuana. There is no credibility here, I mean, he did not investigate her ability to be credible. This is, ya know, he met with her once and even though...he said in his aff (sic)...his deposition that he didn't even know who he was coming to meet, so, again, I think this probable cause affidavit only establishes probable cause of where this (sic) locations were. There's nothing else. There's nothing here of her being credible. Probable cause is not a super high standard but it is something. Probable, your honor, and if we accept the bald conclusions of an eight (8) year old in third grade, I think we're really watering it down and anybody could turn in anyone's parents just based on...ya know, any allegation. We have no idea, maybe she was mad at Carl, but it was his job to make sure that she was credible, to put it in here for an objective part (sic)...the Judge to read this and I don't see the credibility in here, your honor. He was suppose to at least establish that in here. He simply points out that she knew where places were. Well any guest or even him, as a...as a wedding...as a wedding guest could have did that. There's nothing in here at least indicating that she knew what it...she was credible. So with that I would ask the Court to uh...uh...again grant defendant's motion to dismiss. Um...I would also ask the Court to move to publish the deposition in this case and I would also like additional time to respond to this uh...to the response from the State. Um...if it's possible I would like to possibly move the trial by jury since this will affect the outcome of that so with those two (2) motions before the Court I would just conclude again and request the Court to grant defendant's motion to suppress. Thank you.

THE COURT: How long of a response time were you thinking?

MR. BARRETT: Two (2) weeks. Two (2) or three (3) weeks.

THE COURT: When's our trial?

MR. ALLEN: Three weeks. Two an' a half weeks. And...and you probably need me to check here...I can...I didn't want to interrupt you two today. You both did a fine job.

THE COURT: Ah...

MR. ALLEN: We...we filed...

THE COURT: Whoa, whoa, whoa, whoa, whoa. What we're gonna do, and this is the standard rule, I think, in virtually all Courts in the State, is that motions and witnesses are argued by one person per side.

MR. ALLEN: Oh I'm not making an argument Judge, I was just...

THE COURT: And that causes me to ah...I can deal with one mind for each side...

MR. ALLEN: Oh sure, sure...and I'm...I'm not...I'm not going to make an argument Judge. I wasn't making an argument. I was just making a comment about the ah...the ah...time period. We filed that motion to suppress on, I think, the tail end of (inaudible) from December and we were hand delivered today the memorandum in opposition, (inaudible) a response or whatever it was called and...and...just in the spirit of fairness I think we should be provided some opportunity to...to respond.

THE COURT: I do to. Um...

MR. ALLEN: Then that's all I...all I wanted to say.

THE COURT: ..but I think the three (3) weeks, or two (2) weeks is...when we're three (3) weeks from trial is ah...ah...frankly I think you both need to have something earlier then that to do your trial prep. Um...

MR. BROWN: Judge, I think...I guess I don't have a calendar, but I don't think we're all that far from Charla's trial. I thought it was either next week or

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the week after.

MR. ALLEN: I think Carl's is the first one, your honor.

MR. BROWN: Charla's is the earliest. She's not...she's like a week or two (2) away. Unless it's been moved.

MR. BARRETT: I think the Judge...Judge, I think in a previous order you moved ah...Charla's case beyond...just recently and...and I think Carl's is...is first up to bat on...I want to say the twenty...twenty fifth maybe.

THE COURT: Matthew what I'm going to do is direct that if you're going to submit any further written response it be in my hands not later then ah...Friday noon. Um...of this week. As I sit here now, um...my inclinations are that the ah...ah...positions addressed by the State are clar (sic)...are the law. Um...and that ah...especially as to the issue concerning the waiver. Um...that is quite clearly intended to be ah...for situations involving evidence against a child. You referred to ah...31-32-5-1, in your motion, it is 5-3 that specifically says that, in fact, and talks about what it takes to submit evidence against the child ah...and when it's going to be barred. Um...if you...I...I frankly agree with you that you should have timely opportunity to respond to what the State has said here, although, I think our time tables are ah...starting to get pretty tight and that's why I say, I need you to do that by Friday noon. My thinking and what you probably should be looking at, at least preliminarily in making your preparation is, that I, as I sit here now, I would anticipate a denial of the motion to suppress. Ah...before I finalize that I...I do want you to be able to respond. Um...particularly on the waiver issue, I think it's...I don't think it ah...that you've got a ah...valid argument ah...the balance of course I'll let you develop if you want to look up some case law. As to the ah...um...citizen witness kind of response ah...certainly. Ah...ah...or the

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totality of circumstance kind of response I would ah...grant you the opportunity to do that. Mr. Brown if I'm going to be offering them the opportunity to do that I also offer you the opportunity to simultaneously file anything further based, if you wish, based upon the ah...um...presentations today.

MR. BROWN: Okay.

THE COURT: Um...but I would anticipate that ah if there is anything else coming it would be to me by Friday noon and I'll hand down rulings after that. I appreciate your presentations today Counsel. Thank you.

COUNSEL: Thank you Judge.

"AND THAT IS ALL THE EVIDENCE

RECORDED IN THIS CAUSE"

STATE OF INDIANA)
) SS:
COUNTY OF)

IN THE FULTON CIRCUIT COURT

CAUSE NO. 25C01-0310-FC-00073

STATE OF INDIANA,)
Plaintiff,)
VS)
CARL RICHARD,)
Defendant,)

FILED
IN CLERK'S OFFICE
JUN 07 2004
CLERK FULTON CIRCUIT COURT

REPORTER'S CERTIFICATE

I, Lorena Crissinger, Reporter of the Fulton Circuit Court, Fulton County, State of Indiana, do hereby certify that I am the Official Court Reporter of said Court, duly appointed and sworn to report the evidence of causes tried therein.

That upon the Motion to Suppress, Bench Trial and Sentencing of this cause, beginning on the 10th day of February, 2004, I recorded and transcribed all statements by counsel, the evidence given during the trial of this cause, the objections of counsel thereto, and the rulings of the Court upon such objections, the introduction of exhibits, the objections thereto, and the Court's rulings thereon.

I further certify that the foregoing transcript, as prepared, is full, true, correct and complete.

IN WITNESS THEREOF, I have hereunto set my hand and affixed my Official Seal, this 4th day of June, 2004.

Lorena Crissinger
Official Court Reporter
Fulton Circuit Court
Fulton County, Indiana

STATE OF INDIANA	)	IN THE FULTON CIRCUIT COURT
	) SS:	
COUNTY OF FULTON	)	SITTING AT ROCHESTER, INDIANA

FILED

FEB 1 9 2004

Karen M. Miller
CLERK, FULTON CIRCUIT COURT

STATE OF INDIANA, Plaintiff,	)	
vs.	)	CAUSE NOS.: 25C01-0310PC-73 25C01-0310PC-74
CARL RICHARD and CHARLA RICHARD, Defendants.	)	

DEFENDANTS' REPLY IN OPPOSITION TO STATE'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO SUPPRESS

Defendants, CARL RICHARD and CHARLA RICHARD, by counsel, Allen Law Offices, by Attorneys Matthew D. Barrett and Dale Allen, submit the following Reply in opposition to the State's Memorandum In Opposition to Defendants' Motion to Suppress, and in support thereof, state as follows:

I. INTRODUCTION

On December 22, 2003, Defendants filed Defendants' Motion to Suppress Evidence and Memorandum of Law In Support of Defendants' Motion to Suppress Evidence. On February 10, 2004, a hearing on Defendants' Motion to Suppress Evidence was held. During the suppression hearing, the State, by Prosecuting Attorney Richard A. Brown, hand-delivered a file-stamped copy of the State's Memorandum In Opposition to Defendants' Motion to Suppress, dated February 9, 2004, to Defendants' counsel. This was the first time Defendants' counsel saw this document. Defendants submit to the Court that the State's eleventh hour filing prejudiced their ability to competently address the State's allegations during the February 10, 2004 suppression hearing. Defendants respectfully request the Court to consider this factor when deciding on whether to grant Defendants' Motion to Suppress Evidence.

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Furthermore, Defendants incorporate by reference, as if fully set forth herein, Defendants' Memorandum of Law In Support of Defendants' Motion to Suppress Evidence and designated Exhibits.

Finally, Defendants have not misrepresented any of the facts. Nonetheless, the State begins its Memorandum by telling the Court that it will "correct some of the factual allegations made by the Defendants;[1] however, it never bothers to do so. With debilitating ambiguity, the State brands Defendants' factual allegations as being "subtly deceptive," "present[ing] a picture of [the] events that simply is not accurate" and as being "misrepresented."[2] However, once again, the State does not provide the Court with *any* analysis to explain its bold allegations nor does it specifically dispute *any* of Defendants' factual contentions. Furthermore, the State apparently stipulates to Defendants' version of the facts since it totally omits *any* alternative version in its Memorandum under the heading "Facts."

II. INDIANA'S JUVENILE WAIVER STATUTE (I.C. § 31-33-5-1)

The State has misinterpreted I.C. § 31-32-5-1, commonly known as Indiana's Juvenile Waiver Statute. I.C. § 31-32-5-1 states, in relevant part: "*Any* rights guaranteed to a child under the Constitution of the United States, the Constitution of the State of Indiana, or any other law may be waived only (emphasis added) ..." The State urges the Court to accept an exceedingly narrow interpretation of the waiver statute since it asserts that the statute "applies only to juveniles who are suspects in a criminal investigation."[3]

However, the plain language of the waiver statute does not limit its application to juveniles who are or were suspects in criminal investigations; rather, the statute applies to "*any*"

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[1] State's Memorandum In Opposition to Defendants' Motion to Suppress, at 1.

[2] State's Memorandum In Opposition to Defendants' Motion to Suppress, at 1; 3.

[3] State's Memorandum In Opposition to Defendants' Motion to Suppress, at 4.

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rights which would include the well-established fundamental constitutional rights of privacy and family integrity. Although Defendants agree that the waiver statue is certainly invoked more often in the criminal/juvenile context, the State is incorrect when it asserts that the statute is to be strictly limited to such matters. And, even assuming *arguendo* that the waiver statute does apply only in the criminal/juvenile context, the face of the statute does not differentiate between a child as a "witness" vs. "suspect" as the State has asserted, nor is there any case in Indiana that makes such a rigid and limiting distinction.[4] Contrary to the State's argument, "witnesses" can certainly turn into "suspects" during routine police questioning.[5] If the State, at its discretion, had the power to label every individual it spoke with as a mere "witness" instead of a "suspect," then it would be granted a free license to ask anyone incriminating questions and Miranda would be rendered meaningless.

Furthermore, the State is incorrect when it asserts that Callie's "statement is not being used against her in *any* way (emphasis added)."[6] Callie's statement has indeed been used against her because the evidence obtained from Cpl. Campbell's search ultimately resulted in a CHINS proceeding and her removal from her parent's custody. The "sacred and precious privilege"[7] of the parent-child relationship has certainly been invaded by the State. Accordingly, Callie Richard's rights under I.C. § 31-32-5-1 and Miranda were violated when Cpl. Campbell

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[4] State's Memorandum In Opposition to Defendants' Motion to Suppress, at 5. The State also misrepresents the holding in Patton v. State, 588 N.E.2d 494 (Ind. 1992) because this case never held that the waiver statute is *only* to be applied in the criminal/juvenile context. State's Memorandum of Law In Opposition to Defendants' Motion to Suppress, at 5. Patton v. State merely recognized the waiver statute's application in the context of a particular criminal matter at issue in that case and nothing more.

[5] State's Memorandum In Opposition to Defendants' Motion to Suppress, at 4.

[6] State's Memorandum In Opposition to Defendants' Motion to Suppress, at 5.

[7] Partridge v. Partridge, 272 N.E.2d 448, 450 (Ind. 1971).

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interrogated her without first obtaining permission to do so from her parents.[8] Since the statutory power of a parent or guardian to include a law enforcement officer in the questioning of a child implies the power to exclude, Defendants' rights were also violated. This vested statutory right necessarily creates a special and limited situation where the Fifth Amendment privilege against self-incrimination logically extends to parents and/or guardians.[9]

Finally, even assuming *arguendo* that the juvenile waiver statute does not extend Defendants' standing to raise Fifth Amendment self-incrimination rights, it still should be recognized that a violation of another's Fifth Amendment rights may rise to the level of a violation of his own rights to a fair trial.[10] U.S. v. Chiavola, 744 F.2d 1271, 1273 (7th Cir. 1984); United States v. DeRoberts, 719 F.2d 892, 896 (7th Cir. 1983). Due process can be implicated when the government seeks a conviction through the use of evidence obtained by extreme coercion from a third-party. U.S. v. Chiavola, 744 F.2d at 1273.

The issue here is whether Cpl. Campbell's investigative methods would result in a fundamentally unfair trial for Defendants under their due process rights. Cpl. Campbell's intentional violation of the juvenile waiver statute produced evidence which resulted in criminal charges being filed against Defendants. Any introduction of such evidence would be fundamentally unfair because the presence of Cpl. Campbell, the school counselor and the principal (all authority-type figures) produced an inherently coercive atmosphere when 8-year

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[8] The State does not contest Defendants' contention that Cpl. Campbell's questioning of Callie at Riddle Elementary School was highly coercive.

[9] The State claims that "Defendant Charla Richard has no legal relationship to Callie Richard being only her father's wife and would have no claim whatsoever to invoke rights on behalf of Callie." State's Memorandum in Opposition to Defendants' Motion to Suppress, at 5. However, I.C. § 31-32-5-1(1)(2) refers to a child's "guardian" and "custodian." Clearly, a stepmother, like Charla Richard, qualifies as a guardian and/or custodian of 8-year old Callie Richard.

[10] The State fails to address Defendants' due process arguments.

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old Callie was questioned. A strong inference of fear in the mind of a reasonable 8-year old in Callie's position could certainly be drawn from such an intimidating situation.

Essentially, the extremely coercive atmosphere so vitiated the relative value of Callie's alleged statements that it ought not be weighed by a jury in the ordinary course of trial. Such statements ought to be ruled upon first, not only with regard to untrustworthiness, but also with regard to its competency by due process standards. The State should not be permitted to exploit Cpl. Campbell's illegal interrogation in order to bolster its case against Defendants. Although the issue involving the juvenile waiver statute may not necessarily be dispositive with regard to the adequacy of Cpl. Campbell's Affidavit for Search Warrant ("Affidavit"), it certainly is a significant consideration that weighs heavy in favor of granting Defendants' Motion to Suppress Evidence.

III. HEARSAY DECLARANT FOR PROBABLE CAUSE AFFIDAVIT UNDER I.C. § 35-33-5-2(b)(1) AND (2)

Cpl. Campbell's Affidavit is facially deficient under both I.C. § 35-33-5-2(b)(1) and (2). The State has presented an inaccurate application of the relevant legal principles with regard to this issue.

I.C. § 35-33-5-2(b)(1) and (2) provide:

> (b) When based on hearsay, the affidavit must either:
>
> (1) contain reliable information establishing the credibility of the source and of each of the declarants of the hearsay *and* establishing that there is a factual basis for the information furnished; *or*
>
> (2) contain information that establishes that the totality of the circumstances corroborates the hearsay.
>
> (emphasis added)

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A. "Credibility" and "Factual Basis" Prongs Under I.C. § 35-33-5-2(b)(1)

Before I.C. § 35-33-5-2(b)(1) can be satisfied, two separate and distinct requirements must be met with regard to the hearsay declarant: "Credibility" (or "Veracity") and a "Factual Basis" (or "Basis of Knowledge")—commonly known as the "Spinelli" or "Aguilar-Spinelli" test. As the Supreme Court explained in Illinois v. Gates, many lower courts understood Spinelli to set forth a two-pronged test for probable cause determination that required a showing of: (1) facts sufficient to establish the informant's veracity or the reliability of the information; and (2) the basis of the informant's knowledge. Jaggers v. State, 687 N.E.2d 180, 183 n.2 (Ind. 1999). The 1977 amendment to Indiana's statute codified some of these criteria. Id. Subsection (b)(1) remains on the books notwithstanding the demise of the Spinelli test in Illinois v. Gates. Id. The thrust of the Spinelli test is that intelligent communication by an informant must be found upon sufficient information that such information is credible ("reliability" or "veracity" prong) and to conclude that a sufficient factual basis exists in support of the information furnished ("basis of knowledge" prong). Haller v. State, 454 N.E.2d 76, 79 (Ind. Ct. App. 1983).

1. "Credibility" (or "Veracity") prong

Cpl. Campbell's Affidavit does not establish Callie's credibility under I.C. § 35-33-5-2(b)(1). Eyewitnesses and crime victims are considered presumptively reliable unless circumstances exist which call into question their credibility (emphasis added). Allen v. State, 798 N.E.2d 490, 496 (Ind. Ct. App. 2003) (citing Pawloski v. State, 380 N.E.2d 1230, 1232 (Ind. 1978)). However, "[i]nformants' tips doubtless come in many shapes and sizes from many different types of persons ... Rigid legal rules are ill-suited to an area of such diversity." Jaggers v. State, 687 N.E.2d 180, 182 (Ind. 1997) (citing Illinois v. Gates, 462 U.S. 213, 232 (1983)). Uncorroborated hearsay from an informant whose credibility is unknown cannot suffice to

satisfy the probable cause requirement. Marlowe v. State, 786 N.E.2d 751, 754 (Ind. Ct. App. 2003) (citing Illinois v. Gates, 462 U.S. 213, 227 (1983)).

In the present case, it should initially be noted that Cpl. Campbell did not indicate anywhere in his Affidavit that he believed 8-year old Callie Richard to be a credible or truthful child. There is no indication in the Affidavit that Cpl. Campbell asked the principal and/or the school counselor at Riddle Elementary School as to whether Callie has ever had occasion to be untruthful. Callie's motivation for allegedly coming forward and advising her school counselor of the situation is also absent from the Affidavit. Furthermore, there is no indication in the Affidavit that Callie personally appeared before the warrant issuing judge so he could personally assess her credibility. Essentially, young Callie Richard was not a tried and tested hearsay declarant.

Cpl. Campbell's Affidavit contains no objective information establishing Callie's credibility, which I.C. § 35-33-5-2(b)(1) requires. The State's unadorned assertion that Callie is "presumed to be credible"[11] is too conclusory. A blanket assertion that *any* known hearsay declarant is conclusively credible leaves totally undisclosed the basis on which the judgment was made. There simply must be a more comprehensive statement of underlying facts upon which the warrant issuing judge can make an independent determination that the hearsay declarant is credible. With such facts, the warrant issuing judge can challenge the reasonableness of the officer's belief regarding the hearsay declarant's reliability. Eyewitnesses and crime victims are themselves criminals, drug addicts, liars or mischievous children who volunteer information to the police for reasons other than the call of civic duty.

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[11] State's Memorandum in Opposition to Defendants' Motion to Suppress, at 9.

When the further possibility is considered that an officer has not made a good faith assessment of the hearsay declarant's reliability, or may even know him/her to be unreliable, the dangers in acceptance of vague averments of credibility become even more obvious. Automatic judicial acceptance of credibility may tempt officers to make superficial averments of credibility without proper support; and some officers, while they may be above wholesale fabrication, may not be averse to some stretching of the truth on occasion.

Nonetheless, the State argues that Callie is "presumed to be credible" because she had "confided in her school counselor that she had seen marijuana in the barns and house where she lives."[12] First, the State misrepresents the content of the Affidavit because there is no indication that Callie ever told the school counselor anything about "marijuana" being in the house; rather, only the barn is referenced. More importantly, while Callie may have came to her school counselor "on her own,"[13] Callie did *not* come to Cpl. Campbell—he came to her. And, the vast majority of the information contained in Cpl. Campbell's Affidavit was procured during the custodial interrogation. From the perspective of a reasonable 8-year old in Callie's position, the situation was inherently coercive due to the presence of three authority-type figures: a school counselor; a principal; and a police officer. Once in custody, which simply means that Callie would not have felt free to leave, volunteerism was absent.

Even assuming *arguendo* that Callie is "presumed to be credible" as the State asserts,[14] Pawloski v. State recognized that this presumption exists *only* in the absence of circumstances "which cast suspicion upon the informant's reliability."[15] While Defendants' certainly concede

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[12] State's Memorandum In Opposition to Defendants' Motion to Suppress, at 8-9.

[13] State's Memorandum In Opposition to Defendants' Motion to Suppress, at 9.

[14] State's Memorandum In Opposition to Defendants' Motion to Suppress, at 9.

[15] Pawloski v. State, 380 N.E.2d 1230, 1232 (Ind. 1978).

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that "anything is possible," which was the rallying cry Cpl. Campbell repeatedly utilized throughout his deposition testimony and at the suppression hearing, it was Cpl. Campbell's statutory and departmental duty as a police officer to use reasonable diligence[16] towards the elimination of these possibilities. However, the face of the Affidavit clearly indicates that Cpl. Campbell did absolutely nothing to eliminate these possibilities. Thus, contrary to the State's assertion,[17] these possibilities are relevant and continue to loom large when assessing Callie's credibility. Callie's presumption of reliability quickly evaporates when one considers the following suspicious circumstances, which existed at the time Cpl. Campbell drafted the Affidavit:

(a) Callie was an 8-years old and in third grade. The mental condition of a hearsay declarant should be considered when determining whether the information was credible. Social scientists have long maintained that "special protections must be afforded juveniles and to all other persons of below-average intelligence, to immunize the risk of untruthful admissions due to their vulnerability to suggestive questioning."[18] During the 1950s and 1960s, the U.S. Supreme Court began to take into account a witness'/suspect's vulnerability and weakness to help determine whether a statement was voluntary or not.[19] Great inequality certainly existed between Callie and Cpl Campbell at the time of the questioning;

(b) Cpl. Campbell, the principal and the counselor (all three authority-type figures) questioned Callie in a room at the school. The State does not contest Defendants' allegation that the nature of Callie's questioning was inherently coercive under the circumstances;

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[16] *See also* Rules & Regulations of the Rochester Police Department—Neglect of Duty, (8): "Officers shall, at all times when on duty, remain awake, alert and use *reasonable diligence* in preventing crime, detecting criminal violations, protecting property, making apprehensions of persons committing crimes in their presence and those persons who, they have reasonable cause to believe have committed a felony (emphasis added)." *See also* Jaggers v. State, 687 N.E.2d 180,186 (Ind. 1997) ("Police officers are reasonably charged with knowing [I.C. § 35-33-5-2's] basic requirements: 'The goal is that warrants be issued only upon probable cause, shown preferably by facts but in any event by information that is believed to be reliable.'").

[17] State's Memorandum In Opposition to Defendants' Motion to Suppress, at 3.

[18] Fred E. Inbau, Miranda's Immunization of Low Intelligence Offenders, 24 Prosecutor: J. Nat'l. District Atty's. Ass'n., 9-10 (Spring 1991).

[19] Welsh S. White, Miranda's Waning Protections, 202 (2001).

(c) Cpl. Campbell knew that there was an ongoing "paternity suit" between Carl Richard and his ex-wife, Carmen Richard. Cpl. Campbell agreed in his deposition that it was entirely possible that Carmen Richard, or someone else, could have told Callie to make these allegations against her father, Defendant Carl Richard, in order to spite him;

(d) Cpl. Campbell agreed in his deposition that it is possible that the substance in the barn that Callie allegedly referred to as "marijuana" could have been hay, straw, corn stalks or some other form of plant material;

(e) Cpl. Campbell admitted in his deposition that it is possible that Callie could have been mistaken with regard to the identification of the substance alleged to be "marijuana";

(f) Based on his experience as a law enforcement officer, Cpl. Campbell agreed that young children of 8-9 years of age or younger have tendencies to fabricate things and tell imaginative stories;

(g) Cpl. Campbell believed Callie was qualified to identify the substance alleged to be "marijuana" based on "numerous rumors" concerning the Richards' farm, which occurred "years ago" "before Callie was born"; and

(h) Cpl. Campbell never personally observed the substance alleged to be "marijuana" prior to the execution of the search warrant. Thus, cpl. Campbell could only speculate as to (i) whether the substance "believed" to be marijuana existed and (ii) whether it was in fact "marijuana."

In summary, there is nothing on the face of Cpl. Campbell's Affidavit from which the reliability of Callie's conclusions and the truth of the factual allegations could have been objectively assessed by the warrant issuing judge. Callie's bald conclusions were rife with the potential for mischief at the time the Affidavit was drafted. Cpl. Campbell was statutorily required to provide "reliable information" and investigate Callie's allegations to promote clarity and dispel an assortment of possibilities; however, he failed to do. Unlike a trained and experienced police officer, 8-year old Callie Richard was not at all qualified to make the proper deductions, assess probabilities and draw inferences with regard to the substance alleged to be "marijuana." Thus, Callie was not a "credible" hearsay declarant under I.C. § 35-33-5-2(b)(1).

2. "Factual Basis" (or "Basis of Knowledge") prong

Cpl. Campbell's Affidavit does not establish an objective factual basis for the hearsay information that Callie furnished, which is required under I.C. § 35-33-5-2(b)(1). The following cases are helpful in support of this proposition:

First, in Methene v. State, a police officer sought a warrant to search defendant-Methene's residence. The probable cause affidavit submitted to the judge provided in relevant part:

> The undersigned, being duly sworn upon his oath says that the following items:
>
> Cocaine or cocaine base, paraphernalia used in the manufacture or distribution of crack cocaine, records, documents, and letters associated with the sale or distribution of crack cocaine, or other controlled substances, and the proceeds of the sale of crack cocaine are concealed in or about the following premises located at: 1317 North Purdum Street, Kokomo, situated in Howard County, Indiana, and occupied by Mark Methene and that these said items are related to the offenses of Dealing in Cocaine in violation of the respective Indiana Code Section 35-48-4-1.
>
> The Affiant is a four year veteran with the Kokomo Police Department currently assigned to narcotics and illegal drug investigations. During the past 72 hours the Affiant met with a confidential and reliable informant regarding the above location (1317 North Purdum Street, Kokomo, IN). Under controlled circumstances and under the direction of the Affiant, this informant visited 1317 North Purdum Street. During that visit the informant purchased a quantity of white rock-like substance which was reported by Mr. Methene to be crack cocaine. The informant gave Mr. Methene one hundred dollars ($100.00) in U.S. currency during this transaction. The informant has purchased crack cocaine in the past and is familiar with the appearance and packaging of crack cocaine. The informant has personal knowledge that the occupant of 1317 North Purdum Street (Mark Methene) does keep crack cocaine inside the house. Prior to obtaining this information the Kokomo Police Department has received numerous complaints from concerned citizens regarding the possibility of illegal drug trafficking occurring at 1317 North Purdum Street. Many of these complaints indicated that there was a frequent flow of traffic to and from this residence whereby the visitors would only remain at the residence for a very brief period of time before leaving. The Kokomo Police Department has conducted surveillance of this residence in the past and confirmed that there was an unusual flow of traffic which is indicative of drug trafficking.
>
> Based on this information the Affiant believes that the crack cocaine, and paraphernalia related to the use and/or sale of crack cocaine, proceeds from the sale of crack cocaine, and any records or ledgers associated with the sale of illegal drugs, are concealed in or about the residence at 1317 North Purdum Street in Kokomo, Howard County, Indiana.

Based entirely on the foregoing affidavit, a search warrant was issued for defendant-Methene's residence. Officers conducted a search and discovered cash, weighing devices, three handguns and approximately thirty-four grams of cocaine. Defendant-Methene moved to suppress the evidence; however, the trial court denied defendant's motion. Methene v. State, 720 N.E.2d 384, 386-87 (Ind. Ct. App. 1999).

Defendant-Methene appealed and the Indiana Court of Appeals reversed. Id. at 390. The court held that the evidence and reasonable inferences from the face of the affidavit did not provide a substantial basis for a probable cause determination to support issuance of the warrant. Id. The court reasoned that the police officer did not offer any information to the issuing magistrate to establish the informant's reliability under the federal standard or subsection (b)(1) of Indiana's warrant statute. Id. at 388. The court stated that there was no factual basis to support a finding that the informant had given correct information to police in the past or the hearsay that Methene "does keep crack cocaine inside the house." Id. The court stated that neither the judicial officer who issues the warrant nor the reviewing court could rely on the affiant's representations that the informant was "reliable" without an independent factual basis to support that representation. Id. Finally, the court noted that subsection (b)(2) of the statute was also not satisfied because the totality of the circumstances did not corroborate the hearsay. Id.

Next, in In re M.R.D., a police officer drafted a probable cause affidavit after receiving a telephone call from a concerned citizen regarding an underage drinking party. The affidavit provided:

> [Affiant] has good cause to believe that several individuals, under the age of twenty-one (21) years, are in possession or are consuming alcoholic beverages within the residence of David A. Willis, located at 3676E, 500S, Bluffton, I[illegible]
>
> In support of [illegible] belief, your affiant states that on the 27th day of July, 1984, your affiant received a telephone call from a Ms. Myers of Wells County, Indiana, indicating that her daughter had been invited to a party at the

> aforementioned residence in which alcoholic beverages were to be served to individuals under the age of twenty-one (21) years. Based upon this information, your affiant went to the Willits residence at approximately 9:00 p.m. and observed numerous vehicles in the driveway of the Willits residence and in the surrounding area. Your affiant's observations indicated to him that there was, indeed, a sizable party going on at the Willits residence, which corroborates the information provided to him earlier by Mrs. Myers. "Wherefore, based upon the above information, your affiant requests that a search warrant issue allowing him to enter the premises of David A. Willits, located at 3676E, 500S, and thereupon search for alcoholic beverages.

Later that same evening, the warrant was executed, which resulted in a delinquency petition being filed against "M.D." M.D. filed a motion to suppress the evidence and argued that the affidavit failed to establish probable cause. The trial court granted M.D.'s motion. In re M.R.D., 482 N.E.2d 306, at 307-08 (Ind. Ct. App. 1985).

The State appealed and the Indiana Court of Appeals affirmed on this specific issue. Id. at 310. The court held that the affidavit failed to support a finding of probable cause to search under I.C. § 35-33-5-2. Id. The court maintained that the affidavit contained no information bearing directly either on the hearsay declarant's veracity *or* her basis of knowledge. Id. at 309. The court stated that the affidavit contained no information which would reveal what credibility she might have had. Id. In addition, the warrant was devoid of any of the facts upon which the hearsay declarant based her conclusion that alcohol would be served to minors at David Willits' residence during the evening of July 27, 1984. Id.

Finally, in Knaub v. State, a police office drafted a probable cause affidavit which he used to apply for a search warrant. The affidavit read, in pertinent part:

> Julian Keiser, being first duly sworn upon his oath, deposes and says:
>
> 1. That he is a duly authorized and acting officer of the Indiana State Police Department, Marshall County, Indiana.
>
> 2. That on 3/9/77, at 8:30 p.m., Alvin Hernandez was arrested in Plymouth, Indiana, and charged with possession of a controlled substance, to-wit: marijuana.

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3. After being first duly advised of his rights on 3/14/77, Alvin Hernandez made a statement to the undersigned and Officer Roger Smiley admitting his possession of marijuana. During the confession Hernandez told the undersigned that he was in his automobile on 3/9/77 during the noon lunch break from high school with Ron Murphy and Glenda Williams. He advised that he observed Glenda Williams walk to "Butch" Gibson's trailer near the river in Plymouth, Indiana, and buy two bags of marijuana, one for $25.00 and the other for $5.00. He stated that he personally observed her enter and return with the two bags.

4. Hernandez further told the undersigned during his confession that he has been associated with Rubin Vela on several occasions and obtained marijuana from him stating that he sold for his brother. Rubin Vela also stated, according to Hernandez, that he had obtained marijuana from Gibson.

5. The undersigned believes the information furnished by Hernandez to be truthful and accurate for the reason that he was admitting his own guilt and it was in the nature of an admission against interest.

6. Alvin Hernandez described the trailer where he observed the marijuana being purchased by Glenda Williams and the undersigned has personally observed the mobile home which is described as: aqua and white mobile home located next to a house marked 324 East Washington, which house is a green house. The mobile home is further described as sitting north and south with the entrance on the east side, with an awning-type porch in Plymouth, Marshall County, Indiana.

The defendant filed a motion to suppress all of the evidence and argued that the police officer's affidavit failed to disclose an adequate factual basis for concluding that the informant was a credible person. The State argued that the credibility of the informant Hernandez was established because his statement constituted a declaration against his penal interest. The trial court denied defendant's motion to suppress. Knaub v. State, 394 N.E.2d 201, 202-203 (Ind. Ct. App. 1979).

The defendant appealed and the Indiana Court of Appeals reversed. Id. at 204. The court reasoned that although Hernandez' admission of possession of marijuana may have arguably been more reliable because it was a declaration against interest, the same could not be said about his statements regarding the sale of marijuana to defendant at the trailer. Id. The court maintained that where, as here, "an affidavit based upon information from an allegedly credible person fails to disclose (as required by statute) facts from which a determination of that person's

credibility can be made, the affidavit cannot serve as the foundation for a valid search warrant." Id.

Like the situations in In re MRD and Knaub v. State, which both involved identified hearsay declarants who witnessed criminal activity and were not professional informants, Callie was an identified hearsay declarant who claimed to have witnessed criminal activity in the present case. Furthermore, like the situations in In re MRD, Knaub v. State and Methene v. State, which all involved affidavits containing very detailed descriptions of the locations of criminal activity and identified the particular drug involved in each respective case, Cpl. Campbell's Affidavit contains a detailed description of the area of the purported criminal activity and identifies the substance in question as "marijuana." Yet, the courts in In re MRD, Knaub v. State and Methene v. State invalidated the affidavits at issue in their respective cases because the underlying factual basis of the hearsay declarant's credibility was lacking.[20] The same result should be reached in the present case.

It should also be recognized that Defendant Carl and Charla Richards' names do *not* appear anywhere in Cpl. Campbell's Affidavit. The word "they" is stated three times on page 2 of the Affidavit; however, this word is open to interpretation since it could be referring to any number of persons: parents; brothers/sisters; relatives/friends living at the residence; overnight guests; etc... Furthermore, Cpl. Campbell's Affidavit does *not* indicate that he had personal knowledge of any of Callie's allegations, nor did he at any time prior to the execution of the search warrant personally observe the substance alleged to be "marijuana."

[20] *See also* Dunkle v. State, 425 N.E.2d 185, 189 (Ind. Ct. App. 1981) ("Since neither the credibility of the [known informant] nor a factual basis for determining probable cause were established by the affidavit, it was insufficient and the warrant issued pursuant to such affidavit was defective.").

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The State asserts that "if Callie is a credible source that ends the inquiry."[21] If this is so, then it must follow *a fortiori* that the affidavit of an officer, known by the warrant issuing judge to be honest and experienced, stating that contraband is located in a certain place must also be acceptable. It would be quixotic if a similar statement from an honest informant, but not one from an honest officer, could furnish probable cause. But the U.S. Supreme Court has repeatedly held that the unsupported assertion or belief from an honest officer does not satisfy the probable cause requirement.[22]

Furthermore, to accept the State's proposition that *only* "credibility" need be established under I.C. § 35-33-5-2(b)(1) would render meaningless the remaining language of the statute, which requires the establishment of "a factual basis for the information furnished."[23] The "factual basis" requirement of I.C. § 35-33-5-2(b)(1) is not concerned with Callie's honesty. It is concerned, rather, with conclusory validity. Even assuming Callie had credibility amounting to sainthood, the warrant issuing judge still may not accept her bare conclusions anymore than he could accept the bare conclusion of a sworn, known and trusted police-affiant. To do so would amount to an unconstitutional delegation of the decision-making function to Callie, which the Fourth Amendment lodges exclusively in the judge himself.

The "factual basis" requirement of I.C. § 35-33-5-2(b)(1) *assumes* Callie's veracity for truthfulness, and then proceeds to probe and test her conclusion: What were the raw facts upon which she based her conclusion? How precisely did she obtain those facts? Did Callie imagine

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[21] State's Memorandum In Opposition to Defendants' Motion to Suppress, at 7.

[22] *See, e.g.*, Whitely v. Warden, 401 U.S. 560 (1971); Jones v. United States, 362 U.S. 257 (1960); and Nathanson v. United States, 290 U.S. 41 (1933).

[23] The State asserts that "Defendants concede that the facts presented in the affidavit are in and of themselves sufficient to establish probable cause if they are otherwise credible." State's Memorandum In Opposition to Defendants' Motion to Suppress, at 6. This is incorrect. Defendants have clearly challenged both Callie's credibility and the underlying factual information that she furnished Cpl. Campbell.

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or fabricate her allegations? When and what precisely did she see, hear, smell or touch firsthand? If she heard the facts from someone else, what makes that third person "credible" and *how* did that third person come by the knowledge? Was she forced to say what she allegedly told Cpl. Campbell under the threat of punishment or coercion by an unknown third-party? The warrant issuing judge must ascertain the source for the raw data provided by Callie's senses and then weigh that data for himself. He is not concerned with that part of Cpl. Campbell's Affidavit *about* Callie but with the recitation of the story coming *from* Callie. Thus, even assuming for the sake of argument that Callie is "credible," there remains a complete void of information bearing on the "factual basis" requirement. This is a fatal flaw in Cpl. Campbell's Affidavit.

First, there is an absence of objective facts from which the warrant issuing judge could have concluded that an 8-year old child in third grade, like Callie, had a reasonable basis for claiming the substance she saw was "marijuana." There is no objective indication Callie spoke with personal knowledge that she actually knew the substance in question to be "marijuana." The objective reader is merely told that Callie "*believed*" the substance was marijuana, which indicates that she was speculating. The Affidavit does not provide how Callie reached this conclusion. If Callie had even a minor inkling of certainty regarding the substance she would have stated that *it was* marijuana. And, if Callie was only speculating, then her conclusion that the substance was "marijuana" may have been based on rumor, gossip or an opinion from an unknown third-party.

Second, the quantum of detail in the Affidavit describing the barn, house and objects therein does not eliminate the possibility of Callie's conclusion that she "believed" the substance to be marijuana was based upon unjustified speculation on her part. However, the State asserts that Callie's "description of plants drying in an upper area of a barn, plants in camouflaged bags,

and plants previously growing in a secret room in the basement are all strongly corroborative of the identification of the plants as marijuana."[24] The State is essentially saying that even if we entertain some doubts as to Callie's credibility, her explicit and detailed descriptions entitle her information to greater weight than might otherwise be the case. Quite understandably, no authority is cited to support this bizarre notion. In fact, a detailed description sheds no light on credibility. As one court has noted, "If the informant were concocting a story out of the whole cloth, he/she could fabricate in fine detail as easily as with rough brush strokes. Minute details tell us nothing about veracity."[25]

The simple fact that Callie had been physically present on the premises is not enough under the "factual basis" prong to support her allegations of criminal activity. The notion that great detail implies personal observation rather than the overhearing of rumor or gossip, presupposes an honest hearsay declarant. Perhaps the quantum of detail that Callie allegedly provided Cpl. Campbell eliminates the possibility that she was relating what someone else told her, for it is unlikely that such an elaborate description would have been passed to her from some other person. But the detail does not eliminate the possibility that her conclusion about the substance alleged to be "marijuana" was based upon unjustified speculation on her part, perhaps involving a rumor she had heard. And, if detail rests on personal observations of someone else, the objective reader knows nothing of the third person's honesty or source(s) of information. At best, the details only merit the conclusion that Callie had been present on the premises.

Finally, Callie's prior contact with the alleged "marijuana" is the closest the Affidavit comes to providing a factual basis for the information she furnished. However, the statement in

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[24] State's Memorandum In Opposition to Defendants' Motion to Suppress, at 9. Defendants would like to point out to the Court that the State misquotes Cpl. Campbell's Affidavit since nowhere is the phrase "secret room" found.

[25] Stanley v. State, 313 A 2d 847 (Md. App. Ct. 1974).

the Affidavit that Callie "knows what it is because she has been around it before" does not reveal an objective factual basis as to *how* she came to the conclusion that the substance was "marijuana" on the prior occasion. **The State fails to even address this critical question in its Memorandum.**[26] Again, Callie's conclusion that the substance was "marijuana" on a prior occasion may have been based on mere rumor, gossip or an opinion from an unknown third-party.[27] Furthermore, the Affidavit fails to establish a time-frame as to *when* Callie had "been around it before." Was Callie 8-years old at the time or was she, possibly, 4-years old? The Affidavit also fails to mention *where* Callie had "been around it before." Could a mischievous schoolmate have shown Callie oregano or some other harmless substance in a baggie on the playground at school and claimed it to be marijuana as a prank? Cpl. Campbell's Affidavit keeps the answers to these questions and other possibilities shrouded in mystery.

Thus, Cpl. Campbell's Affidavit does not provide a sufficient "factual basis" for the information that Callie furnished under I.C. § 35-33-5-2(b)(1).

B. "Totality of the Circumstances" Under I.C. § 35-33-5-2(b)(2)

Cpl. Campbell's Affidavit does not contain sufficient information establishing that the totality of the circumstances corroborates Callie's hearsay under I.C. § 35-33-5-2(b)(2). What is now subsection (b)(2) of the statute was added in 1984. Jaggers v. State, 687 N.E.2d 180, 183 n.2 (Ind. 1999). By focusing on the "totality of the circumstances," subsection (b)(2) of the statute clearly tracks the then-recent decision in Illinois v. Gates. Id.

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[26] State's Memorandum In Opposition to Defendants' Motion to Suppress, at 9 ("She told Officer Campbell specifically what she had seen and where she had seen it and related to him that she knew it was marijuana because she had been around it before.").

[27] The example given by Prof. Bruce Berner in his article, Search and Seizure: Status and Methodology, 8 VAL. U. L. R. 471, 497 (1974), is relevant: "So if A tells the police, 'D possesses heroin,' the statement contains no facts indicating A's competency; but if A says, 'I saw D place heroin in his pocket,' competency, for this purpose is shown ....", *see also* Dunkle v. State, 425 N.E.2d 185, 189 (Ind. Ct. App. 1981) (citing Prof. Berner's article).

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To determine whether the totality of the circumstances corroborates the hearsay, a judge considers whether there is a fair probability, given all the circumstances, including the "credibility" (veracity) and "factual basis" (basis of knowledge) of the persons supplying the hearsay information, that the evidence of a crime will be found in a particular place. Llyod v. State, 677 N.E.2d 71, 74 (Ind. Ct. App. 1997).

Furthermore, the federal test, which Indiana utilizes, for ensuring the reliability of a hearsay statement in a probable cause determination allows the use of hearsay under subsection (b)(2) only if the totality of the circumstances corroborates the hearsay. Loyd v. State, 677 N.E.2d 71, 74 (Ind. Ct. App. 1997) (quoting Gates, 462 U.S. at 230-31). The reliability of hearsay can be established in a number of ways, including where: (a) the informant has given correct information in the past; (b) independent police investigation corroborates the informant's statements; (c) some basis for the informant's knowledge is demonstrated; or (d) the informant predicts conduct or activities by the suspect that are not easily predicted. Jaggers v. State, 687 N.E.2d 180, 181 (Ind. 1997) (quoting Gates, 462 U.S. at 238). The court should also consider whether the hearsay declarant personally appeared and presented an affidavit or testified before the warrant issuing judge/magistrate, thus allowing the judge to evaluate the informant's knowledge, demeanor, and sincerity. United States v. Reddrick, 90 F.3d 1276, 1281 (7th Cir. 1996).[20]

In the present case, Cpl. Campbell's Affidavit is facially deficient under the totality of the circumstances test for a number of reasons. First, the "credibility" (veracity) and "factual basis" (basis of knowledge) prongs under subsection (b)(1) of the statute are both lacking as previously discussed, *infra*.

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[20] The State makes only a brief reference to Illinois v. Gates but does *not* cite to any of the factors considered in the "totality of the circumstances" test. State's Memorandum In Opposition to Defendants' Motion to Suppress, at 7.

Second, the Affidavit does not reveal whether Callie had ever provided correct information to the police in the past, if ever. Callie was not a tried and tested hearsay declarant.

Third, the face of the Affidavit does not indicate whether Cpl. Campbell conducted an independent investigation to corroborate any of the information allegedly provided by Callie. In fact, Cpl. Campbell testified that talking to Callie at Riddle Elementary School was his first step with regard to the investigation. Cpl. Campbell also testified that he did not bother to take any investigative steps after he spoke with Callie. Cpl. Campbell questioned Callie, drafted the Affidavit and presented it to the warrant issuing judge all in ***fifty-eight (58) minutes***. There certainly was enough time for Cpl. Campbell to take minimal steps towards the development of *some* independent data in support of Callie's allegations; yet, he did absolutely nothing. Furthermore, the State does not allege the existence of any exigent circumstances which would have made corroboration impossible or too burdensome.

Fourth, the factual basis of Callie's knowledge concerning the identification of the substance alleged to be "marijuana" was based solely on the statement in the Affidavit that "she had been around it before." However, as outlined in Section III.A.2, *infra*, this is insufficient.

Finally, Callie never testified before the warrant issuing judge, which would have permitted him the opportunity to at least evaluate Callie's sincerity. Thus, Cpl. Campbell's Affidavit lacks sufficient information to establish that the totality of the circumstances corroborates Callie's hearsay under I.C. § 35-33-5-2(b)(2).

C. The State's Reliance on *Brooks v. State*

The State places heavy reliance on Brooks v. State, 526 N.E.2d 1027 (Ind. Ct. App. 1988) in support of its position that Cpl. Campbell's Affidavit is legally valid.[29] In Brooks v. State, an Indiana State Police detective drafted a probable cause affidavit and applied for a search warrant. The affidavit states:

> I learned ... that: Sherry Hargraves ... and her boyfriend Freddie (no further information known on Freddie) both residing at 9227 Sussex Terrace Apt. 820 Nottinham Village Apts., in Indianapolis, Indiana possesses a substantial amount of marijuana ... Hancock Co. Sheriff Deputy, Richard Kinnamen was at the residence of Mr. Jackie Sexton in McCordsville, Indiana in reference to Mr. Sexton finding his 13 year old daughter Kimberly June Sexton in possession of suspected marijuana. Mr. Sexton asked his daughter where she had obtained the suspected marijuana and she stated that she had taken it from a brown grocery bag located in the dresser drawer in her mother's bedroom at the above-stated address ... Mr. Sexton stated that he told his daughter Kimberly that she was going to turn the suspected marijuana over to the police. Kimberly Sexton then became upset and attempted to telephone her mother and advise her that her father had turned the substance over to a police officer. Mr. Sexton would not allow his daughter to make the phone call ... Mr. Sexton told me on the telephone at approximately 04:30 A.M. 7-27-85 all of the aforementioned and that he did not know how long he could keep his daughter from telephoning her mother and advising her of the situation.

A search warrant was issued based on the above-referenced information. The police found several items of contraband and paraphernalia in the master bedroom. Defendant filed a motion to suppress on the basis that the affidavit failed to establish probable cause; however, the trial court denied defendant's motion. Brooks v. State, 526 N.E.2d 1027, 1028 (Ind. Ct. App. 1988).

Defendant appealed and the Indiana Court of Appeals affirmed. Id. at 1031. The court reasoned that the affidavit provided the facts upon which the hearsay declarant/father based his conclusion. Id. at 1030. The court noted that the declarant/father was "credible" since there was an absence of questionable circumstances. Id. The court further reasoned that the declarant/father not only observed the marijuana in the daughter's possession, but he also

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[29] State's Memorandum in Opposition to Defendants' Motion to Suppress, at 7-8.

observed his daughter attempt to telephone and forewarn her mother upon her realization that he intended to inform the police of the situation. Id. at 1031. The court also recognized that the detective had actually observed the marijuana *prior* to drafting the affidavit, which the declarant/father had confiscated from the daughter (emphasis added). Id. These facts, together with the rational and reasonable inferences drawn therefrom, provided an adequate basis for a finding of probable cause to believe that a substantial amount of marijuana was to be found at the location. Id.

Without offering any analysis, the State summarily asserts that the present case is "very similar to the present case and actually the basis of the warrant in the present case is stronger than facts Brooks."[30] However, a careful comparison of the facts in Brooks and the present case reveals that the State's assertion is misplaced.

First, unlike the hearsay declarant/father in Brooks, who independently contacted the detective and provided the tip, Callie did *not* initiate any contact with Cpl. Campbell. Rather, it was Cpl. Campbell who initiated contact with Callie at the Riddle Elementary School. Although Callie may have originally approached her counselor and advised her of the substance that she "believed" to be "marijuana," the vast majority of the information utilized in the Affidavit was procured from Callie during custodial interrogation under inherently coercive circumstances.[31]

Second, the hearsay declarant in Brooks was an adult father while Callie was an 8-year old child in third grade. Generally speaking, any information coming from an adult father would be more credible than any information coming from a child of such tender years like Callie.

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[30] State's Memorandum In Opposition to Defendants' Motion to Suppress, at 7.

[31] Defendants would once again like to point out to the Court that the State does not dispute the allegation that Callie was "in custody" and that the three adult authority-type figures created an inherently coercive situation from the perspective of a reasonable 8-year old in Callie's position.

Third, unlike the daughter in Brooks, who in the presence of the declarant/father attempted to telephone her mother and warn her about the police, there is absolutely no indication in the Affidavit that Callie made any attempt to contact the Defendants and warn them about Cpl. Campbell. If Callie had made such an attempt, then her actions would have provided a strong inference that the substance was probably marijuana as the court in Brooks concluded. Essentially, unlike the situation in Brooks, Cpl. Campbell's Affidavit does not articulate the threat of any imminent danger to the preservation of the alleged crime scene on the Defendants' property, which would have required immediate action.

Finally, and most significantly, the father/declarant in Brooks confiscated the marijuana from the daughter and gave it to the detective ***before*** the affidavit was submitted for application of the search warrant. Thus, the detective in Brooks did not have to speculate as to whether the substance was marijuana because he had the benefit of personally observing it. The detective's observation of the marijuana provided an adequate basis in support of the father/declarant's allegations. However, in the present case, Callie did not confiscate any of the substance she "believed" to be "marijuana." Unlike the detective in Brooks, Cpl. Campbell was at an incredible disadvantage since he could only speculate as to (1) whether the substance "believed" to be marijuana existed in the first place and (2) whether it was in fact "marijuana" since he never personally saw it until ***after*** the execution of the search warrant. Therefore, contrary to the State's assertion, the facts in Brooks v. State are by no means similar to the facts in the present case.[33]

[33] State's Memorandum In Opposition to Defendants' Motion to Suppress, at 7.

IV. CONCLUSION

For the foregoing reasons, Defendants, CARL RICHARD and CHARLA RICHARD, respectfully request that the Court grant Defendants' Motion to Suppress Evidence, and for all other relief in the premises.

Respectfully submitted,

ALLEN LAW OFFICES

By: _____
Matthew D. Barrett
Attorney for Defendants
Attorney I.D. No. 23884-64

By: _____
Dale Allen
Attorney for Defendants
Attorney I.D. No. 10485-64

CERTIFICATE OF SERVICE

I certify that on the 18th day of February, 2004, service of a true and complete copy of the above and foregoing pleading or paper was made upon each party or attorney of record herein by depositing the same in the United States mail in envelopes properly addressed to each of them with sufficient first-class postage affixed.

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STATE OF INDIANA)
) SS:
COUNTY OF FULTON)

IN THE FULTON CIRCUIT COURT

CAUSE NO. 25C01-0310-FC-73
25C01-0310-FC-74

STATE OF INDIANA

VS

CARL RICHARD and
CHARLA RICHARD

STATE'S REPLY MEMORANDUM

Comes now the State of Indiana by Prosecuting Attorney, Richard A. Brown, and submits this memorandum of law in response to the Defendant's Reply in Opposition to State's Memorandum in Opposition to Defendant's Motion to Suppress. The State will attempt to be brief as the Defendants have raised no new issues or points of law, but the State believes that again the Defendants have misrepresented certain aspects of this case. The State will respond chronologically to Defendants' Reply Memorandum.

First the Defendants claim the State failed to correct factual allegations made by the Defendants. The State would refer the Court to the first 3 pages of the State's original memorandum where the Defendants' claims were contrasted with Officer Campbell's actual deposition testimony.

As to the juvenile waiver of rights statute the Defendants provide no new information and cannot cite any authority that the statute applies to a juvenile in Callie's situation. The fact of the matter is that Callie was not waiving any constitutional rights and that is why this statute does not apply. As to the claim that a person may under certain circumstances exclude evidence based on the violation of a third party's rights, the standard is very high. In Chiavola, cited by the Defendants, the Court summarized the principle as follows:

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FOR JUDICIAL CIRCUIT
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> "The defendant correctly states that a violation of another person's fifth amendment rights may rise to the level of a violation of his rights to a fair trial. *See Cunningham*, 719 F.2d at 896; *Bradford v. Johnson*, 354 F. Supp. 1331 (E.D. Mich. 1972), aff'd, 476 F.2d 66 (6th Cir. 1973). Due process is implicated when the government seeks a conviction through use of evidence obtained by extreme coercion or torture. The issue is whether the government's investigation methods resulted in a fundamentally unfair trial. We believe that the defendant here received a fair trial." *United States v. Chiavola*, 744 F.2d 1271, 1273 (U.S. App., 1984). Emphasis added.

The notion that Callie's experience with Officer Campbell amounted to "extreme coercion or torture" is absurd and no evidence has been presented to support such an allegation. The repeated statement in Defendants' reply memorandum to the effect that the State does not contest the contention that Officer Campbell's questioning of Callie was highly coercive is false. The State does contest that notion and presented evidence about the setting of the interview and Callie's willingness to talk, etc. No evidence whatsoever was presented to support a claim that the interview was "highly coercive" let alone that it amounted to torture.

As to the probable cause affidavit and the hearsay element in it, the Defendants again wish to talk about legal principles that have no application to this case. The Defendants set out I.C. 35-33-5-2(b) and then ignore its clear language. That statute, again, reads as follows:

> (b) When based on hearsay, the affidavit must *either*:
>
> (1) contain reliable information establishing the credibility of the source and of each of the declarants of the hearsay and establishing that there is a factual basis for the information furnished; *or*
>
> (2) contain information that establishes that the totality of the circumstances corroborates the hearsay. (emphasis added)

Section (b)(1) is the Aguilar-Spinelli test and section (b)(2) is the Illinois v. Gates totality of the circumstances test. Either may be relied upon in Indiana. The State has not contended that section (b)(1) applies, but rather has relied upon a totality of the circumstances test. Therefore pages 5 through 19 of Defendants' reply is an irrelevant Aguilar-Spinelli analysis and no response is

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necessary.

The totality of the circumstances test requires the following:

> " In determining whether probable cause exists to support the issuance of a warrant, the magistrate makes a "practical, common-sense decision whether, given all the circumstances . . . there is a fair probability that evidence of a crime will be found." . . . " To determine whether the totality of the circumstances corroborates the hearsay, a magistrate considers whether there is a fair probability, given all the circumstances, including the veracity and basis of knowledge of the persons supplying the hearsay information, that evidence of a crime will be found in a particular place. *Bigler v. State*, 602 N.E.2d 509, 514 (Ind. Ct. App. 1992)." *Lloyd v. State*, 677 N.E.2d 71, 74 (Ind. App. , 1997)

As stated previously, in this case Officer Campbell spoke to 8 year old Callie Richard because Callie had confided in her school counselor that she had seen marijuana in the barns and house where she lives. The fact that she told her counselor on her own is in itself an indicia or reliability. She told Officer Campbell specifically what she had seen and where she had seen it and related to him that she knew it was marijuana because she had been around it before. Further, her description of plants drying in an upper area of a barn, plants in camouflaged bags, and plants previously growing in a secret room in the basement are all strongly corroborative of the identification of the plants as marijuana. And beyond those factors she is presumed to be credible as a mere witness to the criminal activity as opposed to an anonymous tip or an unnamed informant working for the police. The Affidavit for Search Warrant meets all the requirements of establishing probable cause under the totality of the circumstances presented to the judge who issued the warrant.

Last, the Defendants entirely miss the point of the State's reliance on *Brooks v. State*, 526 N.E.2d 1027 (Ind. App. 1988). The affidavit in that case relied on the hearsay statement of the father who related the hearsay statement of his daughter as to the source of the drugs. Because the father and daughter were presumptively reliable as citizen witnesses, as is Callie, corroboration and all the related rules which the Defendants have discussed did not apply. The information was credible and that was the end of the inquiry. In addition, the mere fact that an ex-wife was involved did not constitute a circumstance that cast suspicion on the reliability of the information. In the

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present case the Defendant merely speculate that Carmen Richard somehow instigated the incident out of spite, but there is no evidence whatsoever to support such a claim, and certainly none at the time the affidavit was prepared that would have alerted the officer to further his investigation into Callie's reliability.

For all of the reasons put forth, the State would respectfully request the Court to deny the Defendants' Motion to Suppress.

Richard A. Brown, Prosecuting Attorney
Fulton County, Indiana

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was Mailed by United States First Class Mail to Dale Allen, counsel for the Defendant, at 701 E. Lincolnway, Valparaiso, IN 46383 this 19th day of February, 2004

Richard A. Brown

OFFICE OF THE PROSECUTOR
4TH JUDICIAL CIRCUIT
FULTON COUNTY, INDIANA

STATE OF INDIANA	)	IN THE FULTON CIRCUIT COURT
	) SS:	
COUNTY OF FULTON	)	SITTING AT ROCHESTER, INDIANA

STATE OF INDIANA, Plaintiff,	)	
vs.	)	CAUSE NOS.: 25C01-0310FC-73
	)	25C01-0310FC-74
CARL RICHARD and CHARLA RICHARD, Defendants.	)	

DEFENDANTS' SURREPLY TO STATE'S REPLY MEMORANDUM

Defendants, CARL RICHARD and CHARLA RICHARD, by counsel, Allen Law Offices, by Attorneys Matthew D. Barrett and Dale Allen, submit the following Surreply to State's Reply Memorandum as follows:

I. THE STATE'S ALLEGATIONS REGARDING DEFENDANTS' VERSION OF THE FACTS

The State asserts in its Reply Memorandum that it corrected several of Defendants' factual allegations in its original Memorandum when it cited to several selected portions of Cpl. Campbell's deposition testimony. In the State's original Memorandum, the State alleges that Defendants have "misrepresented facts" in a "deceptive" manner.

However, Defendants would like to point out to the Court that the State has *once again* failed to back up its bold statements with any analysis or specific examples as to what facts have indeed been allegedly "misrepresented" or qualify as being "deceptive" in nature.

The first excerpt from Cpl. Campbell's deposition that the State cites in its original Memorandum asks "if it is possible that Callie's mother, Carmen Richard, could have said something to spite Carl." The question is further qualified when it asks if "it is possible that somebody [else could have said something to Callie]." Cpl. Campbell answers by stating

that "**anything is possible**." Cpl. Campbell is then asked if it is "possible that maybe [Callie] was saying something to hurt her father out of spite because maybe something was going on in this paternity matter." Cpl. Campbell once again replies by stating that "**anything's possible**." Based on this testimony, Defendants stated in their original Memorandum that "Cpl. Campbell agreed in his deposition that it was entirely possible that Carl Richard, or someone else, could have told Callie to make these allegations against her father, Defendant Carl Richard, in order to spite him."

The second excerpt from Cpl. Campbell's deposition that the State cites asks if "it is possible that [Callie] could have been mistaken regarding the identification of this substance alleged to be marijuana." Cpl. Campbell replied by stating that "**anything's possible**." The third excerpt that the State cites asks if "[g]enerally speaking do children, say, eight, nine years of age or younger always tell the truth when you, when you, you know, talk with them about a case or something." Cpl. Campbell replied by stating that "generally speaking most of the time, yes, they do." The final excerpt asks "have [children] ever had a tendency to fabricate things when you spoke with them ... [and] later find out or maybe go off on an imaginated, you know, imaginative story or something like that." Cpl. Campbell replied by stating "[sure]" and that "**it happens**." Based on this testimony, Defendants stated in their original Memorandum that "Cpl. Campbell admitted that it is possible that Callie could have been mistaken with regard to the substance identified as marijuana ... In fact, Cpl. Campbell agreed that children of eight to nine years of age or younger often have a tendency to fabricate things and tell imaginative stories."

Defendants are at a total loss as to how their factual allegations have misrepresented Cpl. Campbell's deposition testimony. Defendants' factual allegations are entirely

consistent with Cpl. Campbell's deposition testimony. While Defendants certainly agree that "anything is possible," it was nevertheless Cpl. Campbell's statutory and departmental duty to take steps towards the elimination of these possibilities; however he took absolutely *no* investigative steps to do so either *before* or *after* he questioned Callie. Cpl. Campbell questioned Callie at the school, drafted the Affidavit and applied for the warrant all in ***fifty-eight (58) minutes***.

As previously noted, the State asserts in its original Memorandum that it will "correct some of the factual allegations made by the Defendants." The State then asserts in its Reply Memorandum that "Defendants' claims were contrasted with Cpl. Campbell's actual deposition testimony." However, the State fails to specifically point out what specific facts have been misrepresented. Even a cursory comparison of Cpl. Campbell's deposition testimony and Defendants' factual allegations does not reveal any misrepresented facts. If an alternate version of the facts exist as the State appears to insinuate, then why did the State fail to provide the Court with such an alternate version in either its original Response or Reply?

The State is also incorrect when it stated in its original Memorandum that none of the cited portions of Cpl. Campbell's deposition are "dispositive of any real issue in this case." The State's allegation has a hollow ring because the possibility that Carmen Richard or someone else may have instructed Callie to say things against her father; that Callie may have been mistaken with regard to the identification of the substance alleged to be marijuana; and that 8-9 year olds are known to tell imaginative stories goes to the very heart of the issue of Callie's credibility as 8-year old hearsay declarant under I.C. 35-33-5-2.

Defendants understand that reasonable minds can certainly differ about the version of the facts. However, if the State is going to make these rather bold and scandalous allegations

against Defendants, then it has an ethical obligation to provide some support for these allegations. Obviously, the State cannot do so. Essentially, it is the State that has deceived the Court by setting forth these frivolous arguments as a diversion from Cpl. Campbell's haphazard investigation and dereliction of duty.

II. JUVENILE WAIVER OF RIGHTS STATUTE

The State claims in its Reply Memorandum that Callie "was not waiving any constitutional rights" with regard to the juvenile waiver statute under I.C. § 31-32-5-1. However, the State fails to address the issue that the juvenile waiver statute is broad since it covers "*any* rights guaranteed to a child," which would necessarily include the constitutional rights to privacy and family integrity, as cited in Defendants' Response Memorandum (emphasis added).

Furthermore, the State misapplies the Chiavola case with regard to the exclusion of evidence based on the violation of a third party's rights. Defendants agree with the State that there is no evidence to suggest that Cpl. Campbell "torture[ed]" Callie during the questioning; however, the circumstances of the questioning did amount to "extreme coercion" under Chiavola. Callie was an 8-year old child in third grade who was brought into a room at her school and questioned by three adults. The questions were very personal and incriminating in nature since they involved both her and her parents. She was questioned by a school counselor, principal and police officer—all three authority-type figures from the perspective of an 8-year old child. Indeed, any 8-year old child in Callie's position would have been considerably vulnerable to such suggestive questioning and would agree with his/her interrogators in order to avoid possible punishment. Without a doubt, Callie's immaturity and inexperience put her at a significant disadvantage in confronting such

interrogation. It would be ridiculous to even assume that Callie understood the consequences of Cpl. Campbell's questions. From the perspective of a reasonable 8-year old child in Callie's position, the situation was inherently coercive.

III. HEARSAY DECLARANT STATUTE—I.C. § 35-33-5-2

The State once again misleads the Court in its Response Memorandum when it asserts that Defendants "wish to talk about legal principles that have no application to this case" with regard to I.C. § 35-33-5-2. Contrary to the State's allegation, Defendants understand that either subsections (b)(1) or (b)(2) will satisfy I.C. § 35-33-5-2's hearsay declarant requirement. In fact, Defendants highlighted the "or" in I.C. § 35-33-5-2 on page 5 of their Response Memorandum.

Furthermore, although the State asserts that "it has relied upon the totality of the circumstances test" under subsection (b)(2), the State still must consider Callie's "veracity" and "basis of knowledge" under an Aguilar-Spinelli analysis, which, by way of necessary reference, are the two prongs under subsection (b)(1). When the State asserts that "pages 5 through 19 of Defendants' reply is an irrelevant Aguilar-Spinelli's analysis and no response is necessary," the State intentionally misrepresents the law and ignores the very cases it cites on page 3 of its Response Memorandum:

> In determining whether probable cause exists to support the issuance of a warrant, the magistrate makes a practical, common-sense decision whether, given all the circumstances ... there is a fair probability that evidence of a crime will be found ... To determine whether there is a fair probability, given all the circumstances, **including the veracity and basis of knowledge of the persons supplying the hearsay information**, that evidence of a crime will be found in a particular place. Bigler v. State, 602 N.E.2d 509, 514 (Ind. Ct. App. 1992); Lloyd v. State, 677 N.E.2d 71, 74 (Ind. Ct.

App. 1997). (emphasis added)[1]

The State is simply incorrect when it asserts that the veracity and basis of knowledge considerations as recognized under Aguilar-Spinelli are absolutely "irrelevant" and warrant "no response" under the Illinois v. Gates totality of the circumstances analysis. Thus, contrary to the State's allegations, even under the totality of the circumstances test under I.C. § 35-33-5-2(b)(2). Callie's truthfulness and basis of knowledge are still highly relevant factors to be considered. The State's argument is prima facie deficient since it intentionally ignores both the veracity and basis of knowledge considerations.

In addition, Defendants would also like to point out to the Court that the State has once again avoided the critical question regarding the circumstances as to *how* Callie came to the conclusion that the substance was "marijuana" when she was allegedly around it on another occasion. The objective reader can only guess as to *how* Callie made such a determination, which is a fatal flaw in Cpl. Campbell's Affidavit.

Finally, the remaining portions of the State's allegations in its Reply Memorandum with regard to the application of the totality of the circumstances test are a mirror image to its allegations on page 9 of its original Memorandum. Defendants have previously addressed all of these allegations in their Response Memorandum.

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[1] *See also* Alabama v. White, 496 U.S. 325, 328 (1990) ("Gates made clear, however, that those factors that had been considered critical under Aguilar and Spinelli—an informant's "veracity," "reliability," and "basis of knowledge"—remain "highly relevant in determining the value of [a hearsay declarant's information]."); U.S. v. Pritchard, 745 F.2d 1112, 1120 (7th Cir. 1984) ("The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all of the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of person supplying the hearsay information."); State v. Allen, 525 N.E.2d 1267, 1270 (Ind. Ct. App. 1988) ("an informant's truthfulness and basis of knowledge are still important considerations"); Culver v. State, 519 N.E.2d 196, 198 (Ind. Ct. App. 1988) (The two elements of the Aguilar-Spinelli test are "relevant considerations in the totality of the circumstances analysis" under Illinois v. Gates).

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IV. THE STATE'S CONTINUED RELIANCE ON *BROOKS v. STATE*

Defendants incorporate by reference, as if fully set forth herein, Section III.C. from its Response Memorandum regarding Brooks v. State, 526 N.E.2d 1027 (Ind. Ct. App. 1988). As previously indicated, Brooks does not have any application to the present case since the facts in that case are completely distinguishable. However, the State claims that "Defendants entirely miss the point of the State's reliance on Brooks" because the pivotal issue in that case involved the "credibility" of the father and daughter, who were citizen witnesses. The State concludes that since Callie was allegedly a "credible" hearsay declarant, like in Brooks, then "that ends the inquiry."

The State's arguments are totally without merit because it has once again misinterpreted Brooks. The court in Brooks recognized that a factual basis of a hearsay declarant's knowledge must be established in addition to credibility.[3] Brooks also recognized Pawloski v. State, 380 N.E.2d 1230 (1978), wherein the Indiana Supreme Court held that "victims and witnesses of a crime are to be considered reliable *unless* incriminating circumstances exist which cast suspicion upon the informant's reliability" (emphasis added).[5] In Brooks, the court concluded that although the hearsay declarant/father's position as an ex-husband might require further inquiry on the issue of reliability since his ex-wife was the subject of the search, that status alone was insufficient to discredit his allegations.[4] Based on this reasoning, the State asserts in its Response Memorandum that "the Defendants merely speculate that Carmen Richard somehow instigated the incident out of spite, but there is no

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[3] Brooks v. State, 526 N.E.2d at 1030 (" ... the affidavit here at issue offers the declarant's relationship to the source, *and the facts upon which the declarant based his conclusion*."). (emphasis added)

[5] Id. (citing Pawloski v. State)

[4] Id.

evidence whatsoever to support such a claim, and certainly none at the time the affidavit was prepared would have alerted the officer to further his investigation into Callie's reliability."

Unlike the situation in Brooks, where there were no ongoing adversarial court proceedings between the two ex-spouses at the time the detective drafted the affidavit, the present case not only involved two ex-spouses but an *ongoing* paternity battle at the time Cpl. Campbell drafted the Affidavit. At the time Cpl. Campbell questioned Callie, he knew of the ongoing "paternity suit" between Carl Richard and his ex-wife, Carmen Richard. (Cpl. Campbell's Dep. at 36, lns. 19-21.) Although the State asserts that there is no evidence to support such a claim, it was Cpl. Campbell's statutory and departmental duty to investigate this matter to verify Callie's credibility since he had knowledge of the paternity suit. This ongoing paternity battle should have alerted Cpl. Campbell to make some attempt to verify whether Callie's allegations were not the product of a spiteful ex-spouse or an unknown third party. Under the authority of Pawloski v. State, Defendants may legitimately speculate about this matter because it was indeed a suspicious circumstance relating to Callie's reliability at the time the Affidavit was drafted.

Furthermore, the daughter in Brooks attempted to call her mother and alert her to the detective's investigation. The detective in Brooks also had the benefit of personally observing the substance alleged to be marijuana *before* the execution of the search warrant. It was the existence of these two facts that significantly bolstered the credibility of the hearsay declarants in Brooks.[5] In the present case, there is no evidence that Callie attempted to alert her parents of Cpl. Campbell's investigation nor did Cpl. Campbell have the benefit of viewing the substance alleged to be marijuana until *after* the search. The State fails to

[5] Id. at 1031.

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appreciate this glaring distinction. Essentially, Callie's credibility was entirely unknown to Cpl. Campbell when he drafted the Affidavit.

Finally, revealingly absent from the State's Reply Memorandum is any discussion concerning the other suspicious circumstances as outlined on pages 9-10 of Defendants' Response Memorandum. By way of omission, the State apparently concedes to the Court that such circumstances existed at the time Cpl. Campbell drafted his Affidavit and negated Callie's presumption of reliability under Pawloski v. State. Moreover, the large amount of suspicious circumstances in the present case did not exist in Brooks. Thus, the Brooks decision is not at all relevant to the present case.

V. CONCLUSION

For the foregoing reasons, Defendants, CARL RICHARD and CHARLA RICHARD, respectfully request that the Court grant Defendants' Motion to Suppress Evidence, and for all other relief in the premises.

Respectfully submitted,

ALLEN LAW OFFICES

By: _____
Matthew D. Barrett
Attorney for Defendants
Attorney I.D. No. 23884-64

By: _____
Dale Allen
Attorney for Defendants
Attorney I.D. No. 10485-64

D00253

CERTIFICATE OF SERVICE

I certify that on the 20th day of February, 2004, service of a true and complete copy of the above and foregoing pleading or paper was made upon each party or attorney of record herein by depositing the same in the United States mail in envelopes properly addressed to each of them with sufficient first-class postage affixed.

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STATE OF INDIANA)
) SS:
COUNTY OF FULTON)

IN THE FULTON CIRCUIT COURT

2004 TERM

STATE OF INDIANA

CAUSE NO: 25C01-0310-FC-00073

vs

CARL A. RICHARD

STATE OF INDIANA

CAUSE NO: 25C01-0310-FC-00074

vs

CHARLA RICHARD

ORDER

This cause was presented upon the Defendants' Motion to Suppress heard in open Court on the 10th day of February, 2004. Now the Court being advised, determines as follows:

1. The Motion to Suppress is DENIED.
2. The Miranda waiver requirements for children complained of by the defendants during the interview with the child Callie is not a requirement for a witness interview, it is a requirement only in the event of an admission or confession by a child concerning criminal activity by the child. The remedy in these settings, of course, is suppression of the evidence in the child's delinquency or waiver trial. That this clearly is the purpose of the statute is apparent from the lack of caselaw on the topic coupled with the clear reference in Section 3 of the Code referring to admission of the evidence against the child.
3. The Court concurs with the State's position that Callie comes forward as a citizen witness so that rules concerning proof of credibility or corroboration do not automatically apply.

   Testing the totality of the circumstances, the report appears on its face to be credible. It comes from an 8 year old and contains no signs of reporting that are inherently incredible as the result of a child's fabrication. The child did not come

to the police originally but instead took similar information to her school counselor. The specificity of the information includes specific locations (a white case in an identified kitchen drawer), activities of concealment and of processing a volume of marijuana, and clear statements of the limitation of knowledge (for instance not knowing whether plants were now in the "secret room" in the basement), all in a location with which the officer was familiar.

4. The Court additionally concurs with the State's position that, even if there were a reason for the officer to have disbelieved these statements, it is apparent that the reviewing Judge did not disbelieve them and authorized a warrant based upon them. The Officer's execution of the warrant was therefore a good faith pursuit of his duties.

SO ORDERED this 25 day of February, 2004.

Douglas B. Morton

Douglas B. Morton, Judge
Fulton Circuit Court

STATE OF INDIANA	)	IN THE FULTON CIRCUIT COURT
	) SS:	
COUNTY OF FULTON	)	SITTING AT ROCHESTER, INDIANA

STATE OF INDIANA, Plaintiff,	)	
vs.	)	CAUSE NOS.: 25C01-0310FC-73
	)	25C01-0310FC-74
CARL RICHARD and CHARLA RICHARD, Defendants.	)	

DEFENDANTS' MOTION FOR CERTIFICATION OF APPEAL OF INTERLOCUTORY ORDER AND STAY OF PROCEEDINGS PENDING APPEAL

Defendants, CARL RICHARD and CHARLA RICHARD, by counsel, Allen Law Offices, by Attorneys Matthew D. Barrett and Dale Allen, pursuant to Appellate Rule 14(B) of the Indiana Rules of Appellate Procedure, move the Court to enter an order that certifies for appeal the Court's interlocutory Order dated February 25, 2004, and stay all further proceedings in the trial court pending disposition of Defendants' interlocutory appeal, and in support thereof, state:

1. On February 25, 2004, the Court entered an Order denying Defendants' Motion to Suppress Evidence under cause numbers 25C01-0310FC-73 and 25C01-0310FC-74. A copy of said Order is attached and incorporated herewith as Defendants' Exhibit "A."

2. Defendants intend to address the following overall issues in the interlocutory appeal:

(a) Whether Defendants' constitutional rights were violated under the juvenile waiver statute (I.C. § 31-32-5-1) when Cpl. Matt Campbell questioned Callie Richard without first obtaining their permission to do so;

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(b) Whether Defendants' constitutional rights were violated under the authority of U.S. v. Chiavola, 744 F.2d 1271, 1273 (7th Cir. 1984) and United States v. DeRoberts, 719 F.2d 892, 896 (7th Cir. 1983), which permit the exclusion of evidence based on the violation of a third party's rights, when Cpl. Matt Campbell questioned Callie Richard; and

(c) Whether Cpl. Campbell's Affidavit for Search Warrant satisfies the "totality of circumstances" test under I.C. § 35-33-5-2(b)(2).

3. The Court's February 25, 2004 Order involves substantial questions of law, the early determination of which will promote a more orderly disposition of this case. That resolution of the above-referenced issues on an interlocutory appeal will determine whether certain evidence was constitutionally seized and can be properly introduced at trial against Defendants.

4. That Defendants will suffer substantial and irreparable injury to their constitutional rights under the Fourth and Fifth Amendments of the United States Constitution and Article I, § 11 of the Indiana Constitution, and all related case and statutory laws under the United States and the State of Indiana, if the Court's February 25, 2004 Order is erroneous and the determination of the error is withheld until after conviction and sentencing.

5. That the remedy by appeal after conviction and sentencing is inadequate to protect Defendants' constitutional rights for the reason that Defendants will have spent time incarcerated at a correctional facility by the time any such remedy is rendered. Furthermore, Defendants own a large dairy business and said business would suffer irreparable harm if Defendants were to be wrongfully incarcerated for any period of time following conviction and sentencing. Finally, Defendant Carl Richard presently cares for four (4) minor children who will be forced into child protective services if he is wrongfully incarcerated.

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6. There is no just reason for delaying appellate review of the Court's February 25, 2004 Order where the delay will work a substantial hardship on Defendants.

WHEREFORE, Defendants, by counsel, respectfully request the Court to certify for appeal its interlocutory Order dated February 25, 2004, to stay all further proceedings, including trial, pending disposition of Defendants' interlocutory appeal, and for all other relief in the premises.

Respectfully submitted,

ALLEN LAW OFFICES

By: _____
Matthew D. Barrett
Attorney for Defendants
Attorney I.D. No. 23884-64

By: _____
Dale Allen
Attorney for Defendants
Attorney I.D. No. 10485-64

CERTIFICATE OF SERVICE

I certify that on the 27th day of February, 2004, service of a true and complete copy of the above and foregoing pleading or paper was made upon each party or attorney of record herein by depositing the same in the United States mail in envelopes properly addressed to each of them with sufficient first-class postage affixed.

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STATE OF INDIANA)
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COUNTY OF FULTON)

IN THE FULTON CIRCUIT COURT

2004 TERM

STATE OF INDIANA

CAUSE NO: 25C01-0310-FC-00073

vs

CARL A. RICHARD

STATE OF INDIANA

CAUSE NO: 25C01-0310-FC-00074

vs

CHARLA RICHARD

ORDER

This cause was presented upon the Defendants' Motion to Suppress heard in open Court on the 10th day of February, 2004. Now the Court being advised, determines as follows:

1. The Motion to Suppress is DENIED.
2. The Miranda waiver requirements for children complained of by the defendants during the interview with the child Callie is not a requirement for a witness interview; it is a requirement only in the event of an admission or confession by a child concerning criminal activity by the child. The remedy in these settings, of course, is suppression of the evidence in the child's delinquency or waiver trial. That this clearly is the purpose of the statute is apparent from the lack of caselaw on the topic coupled with the clear reference in Section 3 of the Code referring to admission of the evidence against the child.
3. The Court concurs with the State's position that Callie comes forward as a citizen witness so that rules concerning proof of credibility or corroboration do not automatically apply.

   Testing the totality of the circumstances, the report appears on its face to be credible. It comes from an 8 year old and contains no signs of reporting that are inherently incredible as the result of a child's fabrication. The child did not come

to the police originally but instead took similar information to her school counselor. The specificity of the information includes specific locations (a white case in an identified kitchen drawer), activities of concealment and of processing a volume of marijuana, and clear statements of the limitation of knowledge (for instance not knowing whether plants were now in the "secret room" in the basement), all in a location with which the officer was familiar.

4. The Court additionally concurs with the State's position that, even if there were a reason for the officer to have disbelieved these statements, it is apparent that the reviewing Judge did not disbelieve them and authorized a warrant based upon them. The Officer's execution of the warrant was therefore a good faith pursuit of his duties.

SO ORDERED this 25 day of February, 2004.

Douglas B. Morton

Douglas B Morton, Judge
Fulton Circuit Court

STATE OF INDIANA)
) SS:
COUNTY OF FULTON)

IN THE FULTON CIRCUIT COURT

2004 TERM

STATE OF INDIANA

VS

CARL RICHARD

CAUSE NO: 25C01-0301-FC-00073

STATE OF INDIANA

VS

CHARLA RICHARD

CAUSE NO:25C01-0310-FC-00074

ORDER

This cause is before the Court upon the defense motion for Certification of Appeal for Interlocutory Order. The Court now determines as follows:

1. The Motion for Certification is now DENIED.
2. The Court deems the issues raised in this case to be typical of motion to suppress issues for which the standard ruling does not include automatic reference to interlocutory appeal.
3. The Court observes that the statements in paragraph 5 of the Motion are largely incomplete in that the defendants do not solely own a large dairy business but instead defendant Carl Richard is a manager for a portion of a dairy operation owned by family farm corporation through Carla's extended family; while the Court recognizes his employment obligations in that capacity are substantial, the Court also believes that he is replaceable in that position. Additionally, the Court notes that the four children of the Richard home (two of his, one of hers, one of theirs) each have child in need of services proceedings pending and that non-custodial parents or appropriate extended family members have been available to provide custodial services for the children, all monitored by the Division of Family and Children.
4. The Court further observes that Charla remains in custody at the Fulton County

Jail. She has other charges pending and, as the Court has attempted to schedule those causes for trial, all counsel have suggested that the cause of action in this case 0310-FC-00074 should be first tried. The Court believes it wholly inappropriate to allow this case to appeal stalling other proceedings while she remains in pre-trial detention.

SO ORDERED this 3rd day of March, 2004.

Douglas B. Morton

Douglas B. Morton, Judge
Fulton Circuit Court

APPEARANCES

COUNTY OF FULTON)

IN THE FULTON CIRCUIT COURT

CAUSE NO.: 25C01-0310-FC-73

STATE OF INDIANA,)
Plaintiff)
VS)
CARL RICHARD,)
Defendant)

TRANSCRIPT OF BENCH TRIAL

BEFORE THE HONORABLE DOUGLAS B. MORTON

JUDGE OF THE FULTON CIRCUIT COURT

DATE: APRIL 6, 2004

LORENA CRISSINGER

OFFICIAL COURT REPORTER

APPEARANCES

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APPEARANCES

ON BEHALF OF THE STATE:

MR. RICHARD A. BROWN
PROSECUTOR
815 MAIN STREET
ROCHESTER, IN 46975

ON BEHALF OF THE DEFENDANT:

MR. DALE ALLEN
5655 BROADWAY
MERRILLVILLE, IN 46410

MR. MATTHEW BARRETT
5655 BROADWAY
MERRILLVILLE, IN 46410

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THE COURT CONVENED ON APRIL 6, 2004, AND THE FOLLOWING EVIDENCE WAS PRESENTED:

PRESENT:

JUDGE DOUGLAS MORTON, Judge Fulton Superior Court

MR. RICHARD A. BROWN, Prosecutor

MR. DALE ALLEN, Counsel for Defendant

MR. MATTHEW BARRETT, Counsel for Defendant

Carl Richard, Defendant

THE COURT: Have a seat troops. The Clerk's office pulled and handed to me two (2) files to bring in here, 0310-FC-73 which I thought I was here on, *State v Carl Richard*, and also available is 0403-FD-16, *State of Indiana v Carl Richard*. Until I saw this file waiting for me, I thought we were not going to address it at all today.

MR. BROWN: Well it was set for, I think, yesterday...I didn't pay any attention to it. I just figured we'd talk about it after we're done or reset it again today (inaudible).

THE COURT: Okay, but I'm not suppose to do anything with it?

MR. BROWN: I don't think so.

THE COURT: Okay. I can do that. As I was walking into the court room on 0310-FC-73, I was handed a written plea agreement and just quickly scanning it, it indicates to me that there is an intention to enter a plea to Count III, for the State to dismiss Count IV and for us to proceed with Trial on Counts I and II. Is that accurate?

MR. BROWN: That's correct.

MR. ALLEN: That is correct your honor.

THE COURT: Carl you and I have some things that we need to talk about

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BENCH TRIAL ON COUNTS I & II

MR. ALLEN: Your honor, as a matter of house cleaning, we will move before the introduction of evidence to ah...exclude any and all evidence found in the ah...either in the building or in...on the grounds that ah...corresponds with his home, based on the fact that we think that the search warrant should be...should have been initiated. We believe it was (inaudible) efficient and we would ask the Court to just have a continuing objection so that I won't have to stand up and do that on a regular basis during the course of this hearing so that it will move expeditiously. As far as opening statement ah...I...we have none.

THE COURT: I've never known the best way to address this, without undergoing some risks of everybody waiving something and I understand you don't want to waive anything. I think that what you are doing here is correct assuming, at least, that your motion to exclude is based upon the Motion to Suppress that you filed earlier.

MR. ALLEN: That is correct (inaudible).

THE COURT: Um... not surprisingly, I'll make the same ruling with the motion to exclude that I made on the Motion to Suppress, which is to deny it, and I think that treating it as a continuing objection is the best way to do that. I keep waiting for the day where ah...three (3) questions into the witnesses testimony, the Court of Appeals looks at it and says, I'm sorry they waived it because if it was suppose to be excluded then ah...his testimony was irrelevant. (Laughter) One of these days that's going to happen but I...I think that you're right that it ought to be dealt with and treated in a continuing objection manner from the get go. Mr. Brown, I kind of did all of that without giving you a chance to get a word in edgewise. Did...did you have a position to express concerning that topic?

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BENCH TRIAL ON COUNTS I & II

MR. BROWN: No.

THE COURT: Dale, while we were looking at the potential for a jury trial, I believe you filed a motion for separation of witnesses in writing.

MR. ALLEN: We did.

THE COURT: Ah...

MR. ALLEN: I...I will redact that motion because it's not relevant in a bench trial.

THE COURT: Okay. Okay. And that's fine. Treat the ah...

MR. ALLEN: We'll withdraw the motion.

MR. BROWN: (inaudible)

THE COURT: We'll...we'll treat the continu (sic) okay, we'll treat the continuing objection as to any issue that was raised in your Motion to Suppress. I don't know if that leaves you other things you need to do or not but ah...anyway that's...that's what I intended to cover with it.

MR. ALLEN: Well with out regurgitating all the arguments we made in the Motion to Suppress it just seems to me that the most expeditious way is to reaffirm our position on that and show it as a continuing objection to any evidence that may have been confiscated...by virtue of the search warrant.

THE COURT: Anything else?

MR. ALLEN: No. Not from defense at this time.

THE COURT: Evidence, Rick.

STATE PRESENTS ITS EVIDENCE

MR. BROWN: I call Matt Campbell.

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Indiana?

A Yes.

Q Let me show you what's marked as State's Exhibit 1, and ask you if you can identify that document.

A This is a sh...signed search warrant from sh...Superior Court Judge.

Q Okay.

A Along with the return.

Q I was just gonna ask you, that would have been the final format you'd served the search warrant and filled in the return?

A Yes.

Q But the upper part is, obviously, the warrant itself?

A Yes.

Q That appears to be an accurate copy of the original?

A Yes.

Q We offer State's Exhibit 1 into evidence.

MR. ALLEN: The defense has a continuing objection, obviously, other then that sh...no further objection.

THE COURT: Show 1 admitted.

STATE'S EXHIBIT 1 ADMITTED INTO EVIDENCE

Q As a result of sh...obtaining that warrant did you then go to that property?

A Yes.

Q Did you know before that who lived at that property?

A Yes.

MR. ALLEN: Fine.

THE COURT: Any objections to 2 through 17?

MR. ALLEN: No, as far as the admissibility, no...no objection.

THE COURT: Other then the continuing objection, of course?

MR. ALLEN: Other then the continuing objections.

THE COURT: Court will show 2 through 17 admitted.

STATE'S EXHIBITS 2 THROUGH 17 ADMITTED INTO EVIDENCE

Q Um...as a result of going in and finding the stuff, I assume it was taken into custody?

A Yes.

Q Describe how that was done.

A It was ah...bagged and ah...I guess bagged and marked at the scene and transported by...some by myself, some by Detective Reichert to ah...Rochester City Police.

Q What...how to you process or how do you keep it from that point on as far as the chain of custody?

A It's ah...stored and locked...locked areas with ah...very limited access.

Q At some point did you submit some of this to the Indiana State Police Laboratory?

A Yes.

Q Which lab was that?

A The Fort Wayne lab. Fort Wayne Regional Lab.

A They...they maintain our numbers, yes.

Q Let me show you what's been marked as State's Exhibit 20. Can you tell me what that one is?

A This is item thirty-five (35) ah...that I processed, put the ah...ah again, the garbage bag in and sealed the box and transported it to the Fort Wayne Lab.

Q Okay. Now the box appears to have tape over every opening.

A Yes.

Q You had sealed it that way...

A My...my tape that I originally sealed is the brown boxing tape which has my initials over it and then when the State Police Lab conducts their examination, they obviously have to open it also so they cut the same seals and re-tape it with their ah...they used actually clear tape on this and the lab tech that conducted the test is initialed where they sealed it back up.

Q Now obviously these two (2) boxes are here, did there come a point and time when you went back and retrieved this from the laboratory?

A Yes.

Q When did you do that?

A Yesterday.

Q At least on the exterior it does it visible appear to be the same one that you submitted?

A Yes.

Q We would offer State's Exhibit 19 and 20 into evidence, Judge.

MR. ALLEN: We have the same objection, the continuing objection noted please, other then that no further objection.

analyzed. It's received by an evidence clerk who checks it in, the computer assigns it a unique case number and it is then placed in the storage vault. When I want to analyze evidence I obtain it from the evidence clerk from the storage vault.

Q And a record of all those transfers, I mean, where that property is at is kept at all times, that is, a record is kept at all times?

A Yes it is.

Q Okay. Let me ah...show you what has been marked, I may have done this backwards, let's see...let me show you what's marked as Exhibit 20 and just from looking at that then can you identify that as to whether that's something that you have dealt with?

A Ah yes I can.

Q Okay. What is that item?

A This is item 35 out of the case 03F4065 that (inaudible).

THE COURT: Well that was real nice but it didn't record. You're gonna have to get back on the microphone if you're gonna do things and say...

Q Or move the box maybe. Trying to make this difficult, I'm not use to having (inaudible) exhibit..

MR. ALLEN: Judge without being redundant ah...please show the continuing objection to any testimony as to what she tested and how it tested out.

THE COURT: Um...I think that's right. I concur.

Q Okay, you indicated this is item thirty-five (35) and I think you referred to a case number?

A Ah yes, this is item thirty-five (35) from case 03F4065.

STATE'S WITNESS #1 MATT CAMPBELL (FURTHER RE-DIRECT)

less of (inaudible) fifteen (15) pounds. If I understood your previous testimony you did not submit all of the items that you believed to be marijuana to the lab, is that correct?

A That's correct.

Q And without marking them as Exhibits, I guess, (inaudible) Court Reporter (inaudible) couple of trash bags and a duffel bag (inaudible) is that all the items that were confiscated?

A All of the items in that pile over there is everything that was taken from the residence.

Q Was there a weight ah...attempt to weight it, that is, the entire substance prior to you taking it to the lab?

A Yes, Officer Shotts and I took the items that we had ah...processed to a set of certified scales to get an approximate weight.

Q Where was that?

A Ah...at Wilson's Corn Products.

Q What was the total (inaudible) weight of (inaudible)?

A Ah...

MR. ALLEN: (inaudible) Judge, I move to exclude his testimony based on the continuing objection.

THE COURT: I'm sorry, was that something new or was that...

MR. ALLEN: No.

THE COURT: new or is that what we talked about before?

MR. ALLEN: It's just continuing objection.

THE COURT: Okay, and of course, this falls under that. Same ruling. I

showing a processing of this marijuana. You've got a large pile of it by the chair, this one chair, you got the stems set aside, you've got more product unprocessed in the same area apparently in anticipation of doing that um...marijuana (inaudible) part of the distribution of it. This is the defendant's barn, the buildings are in view of (inaudible) house, ya know, there was marijuana in his house with a room...there's a hidden room in the house. (Inaudible) connect the defendant to this old (inaudible) and give us an explanation as to why this stuffs outside his barn or his corncrib. Clearly the amount of, fifteen (15) pounds or thirty (30) pounds is by any definition about in excess of what anyone (inaudible) of their own consumption and I think that supports the allegation that Counsel wants to and we ask the Court to find the defendant guilty on both offenses.

MR. ALLEN: Your honor, obviously the defense strongly disagrees with the way the search warrant was brought to the attention of the Magistrate and we feel very strongly that the arguments that we've made, in a prior hearing, are...will withstand Appellate scrutiny and ah...for that reason we think that Mr. Campbell had ah...made a mistake in ah...in that process and we don't believe that any of this evidence should be introduced, and accepted as evidence. That's basically our position, Judge, as far as ah...arguments ah...about the dealing or the amounts, who know's how much a person smokes for his own use. I have no idea what is involved in that sense but our basic underline premise in this case is that the search warrant was ah...should have been initiated at the Motion to Suppress and we disagree with the Courts ruling and for that reason we believe (inaudible) just proceed us as we look at any other case where a guilty finding is made.

THE COURT: I believe there is ah...ample evidence for prima facies. Prima Facie showing of ah...ah..both Count I and II, Dealing in Marijuana in

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each case under the ah...possession with intent and with the manufacture ah...allegations. The ah...I think the evidence is much more then sufficient on both of those. Certainly I've heard and reviewed the arguments relating to the Motion to Suppress and I think I got it right but I understand what you're saying and how that will be used. Court will find the defendant guilty on the ah...allegations in Count I and Count II based upon the evidence presented today. I'm going to order a pre-sentence report and recommendation from the Probation Department, that will be extended to Count III as well, based upon the defendant's plea, as it relates to the plea agreement. And I didn't bring the calendar in to attempt to establish a ah...sentencing date here. Dale are...we typically do sentencing hearings on Monday mornings, although they tend to get worked in with a bunch of other things and generally we anticipate spending not more then about forty five (45) to sixty (60) minutes to ah...on any particular hearing if we're going to work it into that time frame. Does...is that kind of within the picture of what you have in mind here or should we be looking at a different time frame then that?

MR. ALLEN: Judge, I really can't say at this point how much time we would take. We anticipate...

THE COURT: (to Court Reporter) Go get the calendar.

MR. ALLEN: trying to get a cross section of community that has had some contact with Carl um...either through his business as a farmer, or through, ya know, neighbors or maybe a few relatives to provide the Court a good view of who Carl Richard really is and what kind of person he is for purposes of sentencing. If that takes more then an hour ah...it may very well, I don't know, we haven't contacted the ah...the potential people to testify and some...some of

STATE OF INDIANA	)	IN THE FULTON CIRCUIT COURT
	)SS:	
COUNTY OF	)	CAUSE NO. 25C01-0310-FC-00073
STATE OF INDIANA,	)	
Plaintiff,	)	
VS	)	
CARL RICHARD,	)	
Defendant,	)	

FILED
IN CLERK'S OFFICE
JUN 07 2004
CLERK FULTON CIRCUIT COURT

REPORTER'S CERTIFICATE

I, Lorena Cristinger, Reporter of the Fulton Circuit Court, Fulton County, State of Indiana, do hereby certify that I am the Official Court Reporter of said Court, duly appointed and sworn to report the evidence of causes tried therein.

That upon the Motion to Suppress, Bench Trial and Sentencing of this cause, beginning on the 10th day of February, 2004, I recorded and transcribed all statements by counsel, the evidence given during the trial of this cause, the objections of counsel thereto, and the rulings of the Court upon such objections, the introduction of exhibits, the objections thereto, and the Court's rulings thereon.

I further certify that the foregoing transcript, as prepared, is full, true, correct and complete.

IN WITNESS THEREOF, I have hereunto set my hand and affixed my Official Seal, this 4th day of June, 2004.

Lorena Cristinger

Official Court Reporter
Fulton Circuit Court
Fulton County, Indiana

000277

STATE OF INDIANA)
) SS:
COUNTY OF FULTON)

IN THE FULTON CIRCUIT COURT

2004 TERM

STATE OF INDIANA

CAUSE NO: 25C01-0310-FC-00073

vs

CARL A. RICHARD

ORDER

This case was presented by trial to the Court upon Count I, Dealing in Marijuana as a Class C Felony and Count II, Dealing in Marijuana as a Class C Felony on this 6th day of April 2004. Now the Court being advised determines as follows:

1. Upon evidence presented, the Court finds beyond a reasonable doubt that the defendant Carl Richard is GUILTY of dealing in marijuana as alleged in Count I, by possession of marijuana in an amount greater than 10 pounds with intent to deliver.
2. Upon evidence presented, the Court finds beyond a reasonable doubt that the defendant Carl Richard is GUILTY of dealing in marijuana as alleged in Count II, by the manufacture of marijuana in an amount greater than10 pounds.
3. The Court now orders the Fulton County Probation Department to prepare a pre-sentence report and recommendation for sentencing upon the Court's verdicts, sentencing to be in conjunction with the defendant's guilty plea upon Count III. The Court tentatively schedules sentencing hearing for 9:00 a.m., Wednesday, April 28, 2004.

SO ORDERED this 6th day of April, 2004.

Douglas B. Morton

Douglas B. Morton, Judge
Fulton Circuit Court

000278

APPEARANCES

COUNTY OF FULTON)

IN THE FULTON CIRCUIT COURT

CAUSE NO.: 25C01-0310-FC-73

STATE OF INDIANA,)
Plaintiff)
VS)
CARL RICHARD,)
Defendant)

TRANSCRIPT OF SENTENCING

BEFORE THE HONORABLE DOUGLAS B. MORTON

JUDGE OF THE FULTON CIRCUIT COURT

DATE: APRIL 28, 2004

LORENA CRISSINGER

OFFICIAL COURT REPORTER

APPEARANCES

APPEARANCES

ON BEHALF OF THE STATE:

MR. RICHARD A. BROWN
PROSECUTOR
815 MAIN STREET
ROCHESTER, IN 46975

ON BEHALF OF THE DEFENDANT:

MR. DALE ALLEN
5655 BROADWAY
MERRILLVILLE, IN 46410

MR. MATTHEW BARRETT
5655 BROADWAY
MERRILLVILLE, IN 46410

SENTENCING

THE COURT CONVENED ON APRIL 28, 2003, AND THE FOLLOWING EVIDENCE WAS PRESENTED:

PRESENT:

JUDGE MORTON, Judge Fulton Circuit Court

MR. RICHARD A. BROWN, Prosecutor

MR. DALE ALLEN, Counsel for Defendant

Carl Richard, Defendant

THE COURT: This is ah 0310-FC-73, *State of Indiana v Carl Richard*, scheduled for sentencing hearing today. Ah...you're Carl?

CARL RICHARD: Yeah.

COURT REPORTER: Judge. (Holding hand up to stop proceeding)

THE COURT: Yeah.

(PAUSE)

COURT REPORTER: Okay.

THE COURT: Did we record anything at all yet?

COURT REPORTER: Mmm...probably not.

THE COURT: Let's start again. First of all this is 0310-FC-73 which is *State of Indiana v Carl Richard*. We're in the auxiliary courtroom. The poll workers are going through primary election training in the big courtroom today. You're Carl Richard?

CARL RICHARD: Yes.

THE COURT: Carl, as part of the record in this case, we are here on not only my findings in the court trial that we had concerning the two (2) C Felony charges but also

STATE OF INDIANA	)	IN THE FULTON CIRCUIT COURT
	)SS:	
COUNTY OF	)	CAUSE NO. 25C01-0310-FC-00073

STATE OF INDIANA,	)	
Plaintiff,	)	
VS	)	
CARL RICHARD,	)	
Defendant,	)	

FILED
IN CLERK'S OFFICE
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That upon the Motion to Suppress, Bench Trial and Sentencing of this cause, beginning on the 10th day of February, 2004, I recorded and transcribed all statements by counsel, the evidence given during the trial of this cause, the objections of counsel thereto, and the rulings of the Court upon such objections, the introduction of exhibits, the objections thereto, and the Court's rulings thereon.

I further certify that the foregoing transcript, as prepared, is full, true, correct and complete.

IN WITNESS THEREOF, I have hereunto set my hand and affixed my Official Seal, this 4th day of June, 2004.

Lorena Crissinger

Official Court Reporter
Fulton Circuit Court
Fulton County, Indiana

VERIFICATION OF ACCURACY

We verify under the penalties of perjury that the documents in this Appendix are accurate copies of parts of the Record and Transcript on Appeal.

Respectfully submitted,

BY: _____
Matthew D. Barrett #23884-64
Attorney for Appellant-Defendant

BY: _____
Dale Allen #10485-64
Attorney for Appellant-Defendant

CERTIFICATE OF SERVICE

We certify that the foregoing has been served upon the following counsel by first class United States Mail, postage prepaid, this 30th day of June, 2004:

Mr. Richard A. Brown
FULTON COUNTY PROSECUTING ATTORNEY
815 Main Street, Room 301
P.O. Box 237
Rochester, Indiana 46975

Mr. Steve Carter
OFFICE OF THE INDIANA ATTORNEY GENERAL
Indiana Government Center South
302 W. Washington Street
Indianapolis, Indiana 46204

Respectfully submitted,

BY: _____
Matthew D. Barrett #23884-64
Attorney for Appellant-Defendant

BY: _____
Dale Allen #10485-64
Attorney for Appellant-Defendant

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